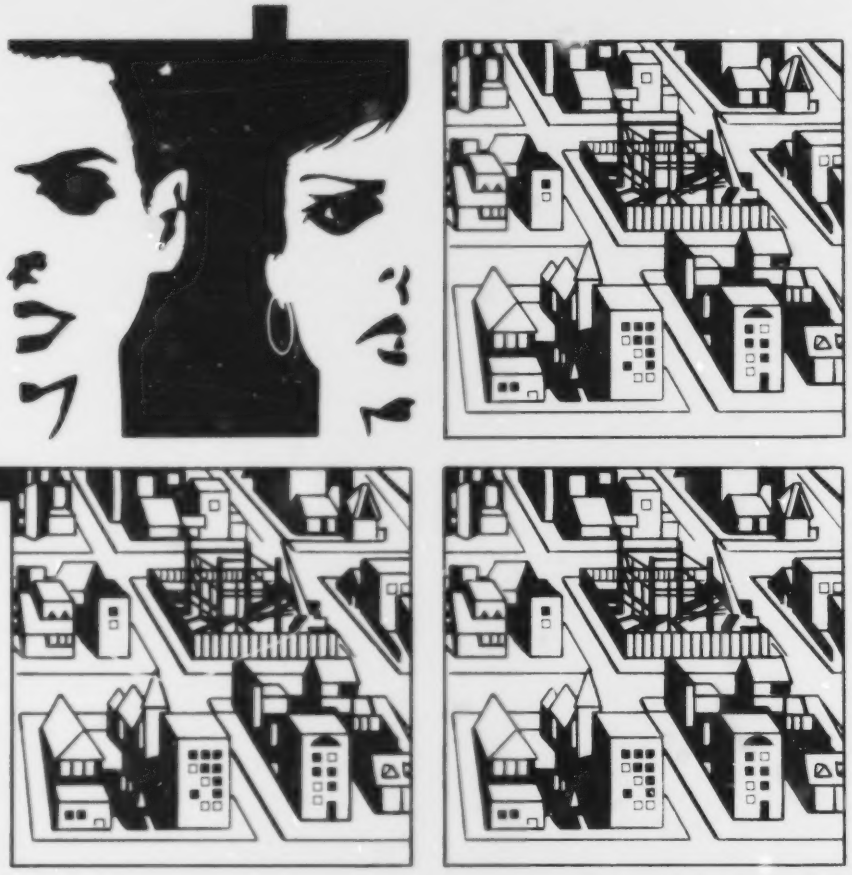
STREET PROSTITUTION

- Assessing the impact of the law
- **Calgary, Regina, Winnipeg**



Department of Justice Canada
Ministère de la Justice Canada

STREET PROSTITUTION: ASSESSING THE IMPACT OF THE LAW

CALGARY, REGINA, WINNIPEG

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Acknowledgements

This report describes the results of an inquiry into street soliciting, the adoption of a new law created to curb it, and some of the major intended and unintended consequences of the law. The research was conducted primarily in Calgary, though we also sought some evidence of the effects of the law from brief on-site studies in Regina and Winnipeg. It covers the period from December 1985 to December 1987. Discussion of the reported cases is complete to the end of April 1988. Where it has been possible to incorporate subsequent developments noted during the completion of the report in 1988, this has been done

The research was designed and undertaken chiefly by the principal investigators. We also relied on the assistance of a number of graduate students at the University of Calgary for interviewing and other types of documentary data collection. We are especially grateful to Burt Harris, Jon Swainger and Shari Williams for their dedicated efforts on the streets, and in the bars and cafés, learning more about the practice of prostitution than any methods course could possibly have prepared them for. Brad Zipursky and Lynn Meadows assisted in numerous other duties gathering observational, statistical and documentary materials essential to our work. Kathryn Gregory also assisted with some of the research, especially in the last days. We thank them all for their persistence, hard work and, in some cases, courage under stress. We also enjoyed the input of our colleague, Dick Wanner, who offered helpful suggestions regarding design, analysis and presentation. Finally, we must thank Tracy Davis and Terry Brannigan who were there for us when it counted.

Police in Calgary, Regina and Winnipeg were extremely open, informative and helpful. In particular, Staff Sgt. George Rocks in Calgary was always available for assistance and worked with our team throughout the study. Mr. Tudor Beattie in the Calgary Crown office expedited our access to the court records. Both deserve special recognition. In addition, P.J. Knoll of the Police Commission and the Faculty of Law at the University of Calgary openly shared his previous experience as a Calgary prosecutor with researchers. We are happy to report that in all three cities, government workers and police at every level were remarkably open and helpful. So too were social service workers, politicians and community representatives. Our only prospect of thanking them in kind is to build intelligently on the raw materials and ideas they shared with us. The readers will be the judge of that.

We are also grateful to the street prostitutes, male and female, who spoke to us and opened up their world to us. None of our stereotypes survived the interviews. Every person had a different story to tell. Our hope is that, as a result

of our interaction, parliament might discover better ideas about how to come to terms with their work, and that their stories will ultimately be happier ones

At the suggestion of the Department of Justice, we created an advisory committee to try to ensure a balanced consideration of the competing interests in the study of Bill C-49. In addition to Tudor Beattie and George Rocks, the advisory committee also benefitted from the participation of Gary Dickson from Prodanchuk-Dickson, and Lois Sparling representing the Elizabeth Fry Society. We thank them all for their assistance.

Finally, we thank John Fleischman for his personal and professional generosity, his helpful advice on research, and his insights into the street scene. The things which make prostitution a fascinating subject for social scientists, also make it precarious for politicians. We do not covet his work as mediator of both sides of this reality. However, he does this work well and we respect him for it.

I. INTRODUCTION TO THE EVALUATION OF THE IMPLEMENTATION OF BILL C-49 IN CALGARY, REGINA AND WINNIPEG

The Social Context

Public concern in the early 1980s over street soliciting and the sale of pornography resulted in the creation of a special committee by Mark McGuigan, then Justice Minister, to hold public hearings to inquire into these matters and to make recommendations to the government. The Special Committee on Pornography and Prostitution, chaired by Paul Fraser, published its final report in May, 1985. The report made one hundred and five recommendations, sixteen of which concerned adult prostitution. With respect to street soliciting, the committee stressed that the major element which ought to concern parliament was the public nuisance associated with it. Accordingly, in recommendation fifty-eight the committee advised that s. 171 of the Criminal Code be changed to cover street soliciting, and that s. 195.1 be repealed from the Code. Section 171 covers public disturbances, and, as the report noted, it has a "distinctive nuisance flavour to it."[1] The committee also stressed that "perceptible interference with members of the public or neighbouring occupiers must be proven."[2] In 1985 John Crosbie, then Minister of Justice, introduced Bill C-49 to remedy the situation. The Bill entailed a revision to the soliciting law which specified more clearly the evidentiary requirements to establish guilt. It is noteworthy that the Minister chose not to pursue nuisance per se. Nuisance can be a highly ambiguous, if not a purely subjective state. Instead, section 195.1 was revised to deal with identifiable public behaviour which consists of stopping or attempting to stop vehicles, impeding traffic, or communicating for the purposes of offering to provide or to purchase sexual services. The communicating element applied equally to sellers and buyers, and a public place was defined to include a motorized vehicle open to public view.

The new law included a provision that required parliament to review the performance of the law within three years of its coming into force, which was in December of 1985. Therefore, in May 1987, the Department of Justice commissioned several studies to assist in evaluating the effectiveness of the law on the prairies. Calgary, Winnipeg and Regina were among the cities chosen since these were cities which reported serious problems with street soliciting at the time of the Fraser Committee hearings. Because of the large number of submissions from Calgary, the Department of Justice chose Calgary as the chief target site on the

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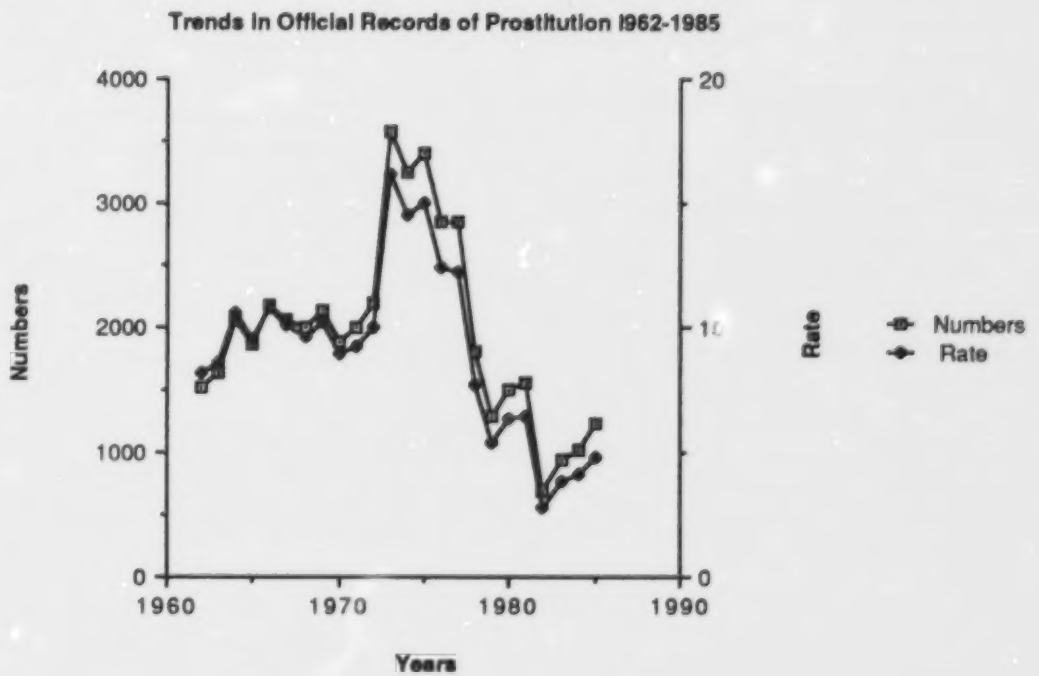
1 Report of the Special Committee on Pornography and Prostitution, Paul Fraser, Chairman, Vol. 2: 541 (Ottawa: Supply and Services).

2 P. 540

prairies. Consequently, the bulk of this report deals with Calgary. Our Winnipeg and Regina studies were confined largely, though not exclusively, to interviews of key actors in law enforcement, and with the statistical patterns of enforcement in those cities.

The Department of Justice had commissioned earlier studies at the time of the Fraser Committee to provide an assessment of the problem of prostitution in all the major regions of the country, including the prairies.[1] The purpose of these studies was to provide basic social science information about all aspects of the prostitution business. The present study is more conceptually focussed, though we have relied on the 1984 report for baseline data where possible. Our task was to evaluate the performance of Bill C-49 by identifying how the new section of the Criminal Code was implemented by the justice system, and how the practice of prostitution, particularly street soliciting, has been affected by the changes. Prior to these changes, police utilization of the soliciting section was virtually abandoned due to successful court challenges. The following graph represents the trends in all prostitution-related offences recorded officially by the police throughout Canada from 1962 to 1985.

Chart 1.1



The "official record of prostitution" refers to an aggregate measure of prostitution calculated by the Uniform Crime Reports that is obtained by adding all

[1] Melanie Lautt, Project T.A.P. Towards an Awareness of Prostitution, Ottawa: 1984.

the prostitution related activities--soliciting, bawdy house offences, procuring, etc. Soliciting makes up over ninety percent of such charges. The graph suggests that, whether we look at absolute numbers or the rate per 100,000 of the population, police activity was greatest in 1973 (3,573 cases nation-wide), and that in the late '70s and early '80s activities dropped well below the averages recorded in the period 1962-70. This does not mean that prostitution became less prevalent--quite the opposite. The police more or less seemed to have just given up on soliciting. As the Fraser Committee noted, in the early 1980s "the conviction within the ranks of the law enforcers" suggested the soliciting law was "worthless" and "deprived...of any force."[1] Since there was no power in the law, police stopped investigating and reporting offences, and, consequently, the numbers reported to the Uniform Crime Report fell steeply. The small increases noted in the graph in the early eighties reflect an increasing reliance on procuring charges and bawdy house charges to replace the defunct soliciting law.[2] Our study was designed to discover what occurred in the period after the last datum point on the graph.

Concurrent Developments in the Study of Bill C-49

In 1987, a number of concurrent studies arose which reflected the interests of certain professional constituencies in assessing the impact of the new bill. The Vancouver City Police Department undertook a study of the impact of the law. Based on evidence from various urban forces, it recommended to the National Association of Chiefs of Police that the law has not done the job for which it was designed. The remedy proposed by the Vancouver police is to make soliciting a dual procedure offence.

In 1986 and 1987, another sector undertook a survey of the behaviour of the new law to document, not how inefficient it was, but how harmful. The Canadian Association of Elizabeth Fry Societies conducted a mail survey of information gathered from court dockets by local society members throughout Canada. The survey documented that the law had resulted in a dramatic increase in the criminalization of women who relied on prostitution as a source of work and income. The survey noted, first, that the law did nothing to alleviate the very high levels of physical abuse of female prostitutes, and that the law had driven the prostitutes underground to more remote and darker areas of the cities where they experienced increased physical jeopardy. Second, the law was being applied to target female sellers more frequently than male customers--perpetuating the double standard in the control of vice. Third, the law was interfering with the ability of the women to earn a living, police harassment had increased, and the women were

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1 Op. cit. p. 541.

2 Figures reported here are based on Relative Trends, a compendium of criminal justice statistics published by the Canadian Center for Justice Statistics, Ottawa, in microcomputer cassette form, 1987.

finding that they had to work longer hours to pay for fines. And finally, the law had no impact on the experience of juvenile hookers, making them a kind of double outlaw--both for being runaways under child welfare laws, as well as being liable for soliciting under the criminal code. Where the Vancouver Police were advising how the law might be strengthened, Elizabeth Fry recommended that it be repealed.

The issue of juvenile prostitution exercised another aspect of the social service community. In September 27-29, 1987, the Canadian Child Welfare Association sponsored the "National Consultation on Adolescent Prostitution" at Mont Tremblant, Quebec. The consultation was designed to create a national network of care givers, and to sensitize the professional social welfare community and the public about the predicament of juvenile prostitution. The discussion paper on adolescent prostitution by Frederick Mathews stressed that criminalizing the activities of young prostitutes is counterproductive.[1]

Part of the solution, at least from the social welfare perspective, calls for greater control of child sexual and physical abuse. Bill C-15, which was passed in April 1987, and proclaimed in January 1988, deals primarily with sexual offences against children. Sex abuse has been reported by some as a correlate of juvenile prostitution. The Bill prescribes penalties to deal with the sexual exploitation of children and adolescents. However, the Bill also introduced a change to s. 195, subsections 2-4, which made it an indictable offense punishable by imprisonment for up to fourteen years for anyone living off the avails of a prostitute under the age of eighteen. Similarly, persons obtaining or seeking the sexual services of a prostitute under the age of eighteen commit an indictable offense punishable on conviction by imprisonment for up to five years. At the time of writing, no charges had been reported under these new provisions, and it is impossible to determine with what success such laws will be implemented by the police.

We draw several lessons from these contemporaneous discussions. First, there is little consensus among them about what the effect or the purpose of the law is or ought to be. Police stress control by arrest and conviction; the social welfare

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[1] Frederick Mathews, "National Consultation on Adolescent Prostitution: Discussion Paper," Toronto: Canadian Child Welfare Association, 1987. Rather than fostering deterrence, prosecution for soliciting creates a trap in which fines are paid by further acts of prostitution, and the stigma of a criminal record delays the bridging to legitimate careers and makes the change more difficult. As Mathews points out, the career of adolescent prostitutes is transitory--"simply a bridge between impoverished states." However, the typical social welfare agency with its limited resources, nine to five office hours, competing case loads and prying social workers, have been little better than the police in dealing with the circumstances of the adolescent prostitute. Mathews recommended a more holistic approach that strikes at the root causes of adolescent prostitution, and which deals systematically with the social, legal, educational, emotional, medical, and life-skill needs of adolescent prostitutes.

sector stresses the double standard of control, the harmful, personal consequences of arrest and conviction, and the ultimate counter-productivity of stigmatizing those involved. Second, the sorts of solutions recommended are inconsistent. On one reading, the social service sector would de-criminalize soliciting by repealing Bill C-49, but introduce it for certain customers through Bill C-15. For their part, the police want greater leverage in arresting offenders, but apparently not all the leverage which is supplied by the new provisions governing adolescent prostitution. Obviously, these readings oversimplify the respective positions. For our part, the lesson remains the same--there is substantial inconsistency between the purposes and findings of these studies, studies which have overlapped in part with our research.

The Substantive Objectives of the Current Study

In assessing the performance of the changes to s. 195.1, we wanted to conduct an overall assessment of the impacts of the law--both intended and unintended--on a whole range of persons and institutions. Therefore, we set out to learn the answers to a number of questions:

1. Numbers--Were there fewer prostitutes on view in cities where the Fraser Committee had received public and police complaints? Did the law contribute to a decrease in the numbers of persons engaged in street soliciting, or in the amount of time spent soliciting? Had any individuals "squared up" as a result of changes to the law? Did the law cause prostitutes to change their locale, and the streets and areas they frequented? And were there other factors that might influence changes in the numbers of prostitutes on view aside from the deterrence and incapacitation believed to result from the new law?

2. Displacement--Did the law displace soliciting by street prostitutes to off-street areas? Specifically, did the law actually suppress prostitution or did it displace it to massage parlours, escort services, brothels or other off-street locations?

3. "Professional" Practices--Did the law bring about changes in the way prostitutes were working in terms of the locations chosen for meeting customers and/or for transacting their business? Did the law influence the types of services offered, and rates of services advertised, and/or the types of services and prices requested? Were prostitutes more dependent on pimps as a result of the law?

4. Social Characteristics--Did the law affect the social characteristics of the population of prostitutes such as age, gender ratios, or race? Did it contribute inadvertently to increased anxiety, danger and/or conflicts on the street?

5. Customers--What was the effect of the law which explicitly made customers liable to arrest? Was there a change in the number of customers and/or their social

characteristics? Was the law of graver consequence to customers compared to prostitutes? Was the amount of vehicular traffic affected?

6. Police--How was the law actually employed by the police? What strategies were devised to implement the law, and which sub-sections of s. 195.1 did police rely on? What sort of evidence was required to make an arrest? Did the law give police an effective weapon to deal with the nuisance factor described in the Fraser Report?

7. Arrest and Conviction Records--How many charges were laid by police and what sort of conviction rates and penalties resulted? What was the ratio between male and female accused? between prostitutes and customers?

8. Prosecution and Conviction--What evidentiary requirements were needed by the courts to register convictions? How did such requirements influence the decision to prosecute as well as the trial outcomes? Did successive convictions result in more severe penalties, and did the latter have greater deterrent effects? Were the police and prosecutors satisfied with the ability of the law to control street prostitution?

9. Defense Strategies--From the point of view of the Defense Bar, what special problems were associated with the law? What sort of constitutional and evidential elements in the offense did they raise in defending their clients? What role was played by the Charter of Rights and Freedoms?

10. Jurisprudence--What sort of decided cases have emerged over the two years of application of the law? How has this influenced the ability of the law to suppress street soliciting? Have the decisions been consistent within and across different jurisdictions?

11. Community Impact--What has the affect of the law generally been at the level of the community? Have neighbourhoods experienced fewer problems as a result of the application of the law? What evidence of impact has been recorded in the popular press? by community associations? by businesses close to the strolls?

12. Social Welfare Impact--Has the application of the law brought about a greater reliance by accused persons on welfare and social services, treatment programs, outreach programs, and/or legal aid plans, or different types of such programs?

13 Recommendations--Are there alternative control policies that might be used along with, or instead of, the soliciting law to regulate prostitution in Canada? The Fraser Committee's recommendations advised how to deal with the nuisance factor. It also recommended that provincial enabling legislation might be created to regulate "prostitution establishments" (recommendation 61).[1] Is there anything in

[1] Fraser Committee, pp. 685-686.

our study of the performance of the soliciting law that might allow us to speculate about such a recommendation?

Some Methodological Limitations of the Inquiry

There were three factors which have proved important in collecting and interpreting the results of our inquiry, and which represent important methodological limitations. First, the previous study on the prairies by Melanie Lautt was somewhat different in its geographic emphasis, objectives, scope and content than this study, and consequently, did not always provide good baseline information of a before and after nature. It provided an account of the experiences of prostitutes that stressed the interpersonal relationships between hookers and customers, pimps and the police. It is one of the most insightful portraits of the life of prostitution on the prairies. However, it is unclear whether it can be employed in a "before and after" study for Calgary that would allow us to identify, for example, any subtle changes in the age distribution of hookers, ethnicity, gender ratios, stroll activity, pimping, date types, and things of this nature. The field work in Lautt's study was based on interviews with thirty-six women from among three or four Prairie cities, twelve of whom were incarcerated. Just under half were of Native descent. Lautt's respondents tended to be younger, less well educated, and had more children than those we interviewed in Calgary. None of our respondents was incarcerated, all were working in Calgary and very few were Natives. The large Native sample found in the Lautt study is more indicative of the Regina and Winnipeg situations than Calgary. Consequently, comparison of our findings with Lautt's is frequently misleading, since the differences we have found reflect regional variations across the prairies as opposed to changes in the population over time. Therefore, in addition to seeking changes over time, we have tried to characterize the differences between the circumstances of prostitutes in all three cities, rather than lumping them together, in order to maintain the important regional variations.

A second limitation in our work has arisen from the reluctance of many persons to cooperate with the researchers--sometimes the prostitutes, but more especially the pimps and customers. Many of the prostitutes were amused that they were the subject of an inquiry, and that their perspectives on prostitution were being recorded. On the other hand, there is an outlaw subculture associated with prostitution, and respondents were sometimes sceptical of social science research--the females more than the males--especially when they suspected that our interviews might have a negative impact on their business. On this point, we simply persisted with approaches on the main strolls in Calgary until we had contacted some seventy active prostitutes, hence obtaining a sample that represented the plurality of the active population. A related methodological issue was the varied experience of the

prostitutes and their ability to report accurately about their experiences. In analyzing the responses, we have attempted to control for the amount of "seniority" or "experience" of the various respondents. As for the official actors--the police, prosecutors, defense lawyers and government official--they were, by contrast, extremely cooperative, and furnished us unstintingly with their time, advice, documents and records.

A third methodological factor about which we were recurrently aware was the potential for spuriousness in identifying sources of change. It would not be surprising to find that, over the past four or five years, the circumstances of prostitution have changed. Our problem was to try to determine whether such changes were associated with the change in the law, and whether the law was the only source of change, or whether it produced effects in concourse with other factors. On the prairies, one of the chief determinants of change, aside from the law, has been the downturn in the economy, particularly in Calgary. Consequently, we were constantly faced with trying to separate these independent influences. A related problem was the suppression of the effects of the law which occurred due to legal challenges that put the law on hold as cases were examined before the provincial courts of appeal. Though some might conclude that there is little evidence for the closing of strolls as a result of the law, it also must be borne in mind that for much of the period during which the current field studies were being conducted, the law was not being applied.

Finally, in weighing the evidence for the effectiveness of the law, we were working within only a very short window of time--1986 and 1987. There are two points to be made here. First, sting operations did clear prairie streets almost immediately in the winter of 1986, but the effects were temporary, as numbers rebounded to previous levels almost immediately. The second point is that it may take several years of consistent application to discover the longer term consequences of the law, consequences which might only become evident as older, repeat offenders face possibly increasingly stiffer penalties, and greater incentives to "square up," as provincial jails become a bit more crowded, and as the possibility of incarceration makes street life an unattractive option for those younger persons who are thinking about entering it. We can only speculate about the future, longer term effects in this study--provided the law survives constitutional review in the Supreme Court.

Methods Employed to Collect Information About the Impact of Bill C-49

In this discussion we will only briefly identify the strategies employed to gather information. More detailed information is contained in the chapters which follow. We have gathered information in eight separate areas.

1. The Statistical Record in Calgary following Bill C-49

We examined the official records of arrest, and prosecution prior to and following the change in the soliciting law. For Calgary and Regina, we traced the records of arrest back to the late 1970s, though this was impossible in Winnipeg. For 1986 and 1987, we followed all arrests and prosecutions to determine their volume, the ratio of male customers to male and female prostitutes, and, where available, recorded their case outcomes. Generally speaking, information was more readily available in Calgary and Regina; Winnipeg was only introducing computerized record keeping in 1987. More particularly, we are able to document legal and certain personal data on prostitutes and their customers including patterns of arrests, trials and sentences in Calgary for 1986 and 1987.

2. The Key Personnel in the Justice System

We interviewed the major key actors in the criminal justice system in the three cities. We spoke only to those persons involved in the policing and prosecution of soliciting cases. Generally speaking, this meant the vice squad detectives, prosecutors in the provincial and youth courts, and members of the judiciary. There was some resistance from the latter constituency, which we were advised was necessitated by the division of powers in the Canadian state--judges are not supposed to influence parliament in creating or revising legislation. In Winnipeg and Calgary, we also interviewed members of the municipal licensing departments to learn about municipal experience with off-street prostitution in the form of massage parlours and escort agencies. In both cities there were strong links between the vice units and the license departments to coordinate control of prostitution.

3. Jurisprudence and the Application of Bill C-49 in the National Context

To situate the Calgary experience in the larger patterns of prosecution and conviction, we reviewed the decided cases which have reported the results of judicial examinations of the legal challenges to s. 195.1. This has been done by a study of the judicial decisions in all of the provincial jurisdictions across the country, and has established the two areas which have been the key sources of appeals--constitutional challenges to the validity of the law for restricting rights provided for in the Charter, and more specific arguments that have raised questions about the evidentiary requirements of s. 195.1.

4. Prostitutes and the Strolls

First, we conducted systematic counts of the numbers of prostitutes on view in the major strolls in Calgary in order to document the magnitude of the street prostitution problem, and, by implication, to assess the nuisance factor. Counts were conducted for a period of one week each in June and August, 1987, and on Friday evenings throughout the fall of 1987. In Regina and Winnipeg, we toured

the major strolls informally to establish the number of persons involved, and the sorts of neighbourhoods affected. This would give us some grounds for comparing the situations in the different cities.

Second, we developed a long questionnaire to learn from the prostitutes their experiences before and after Bill C-49. We were interested in establishing background characteristics of the respondents (age, gender, experience, city of residence, criminal record, etc) as well as the impact of the law on how they conducted their business (services, prices, income, use of intermediaries, pimps, location of strolls, attrition among associates, etc). The interviews were directed at both male hustlers (n= 19) and female hookers (n=51). Seventy persons were interviewed in total.

Third, we conducted a systematic study of the changes in off-street prostitution in Calgary, specifically the escort agencies, to determine whether there was any evidence of displacement of individuals or business to such locations as a result of the law. We examined the number of escorts, number of agencies, and the amount of advertising over the last nine years, with particular attention paid to changes over the past two years.

5. Media Coverage

We examined the local Calgary papers--the Herald and the Sun--over the 1982-87 period to monitor the extent of media coverage, the amount of pubic concern, the views of reporters and citizens, and the nature of the news coverage of the prostitution problem both nationally, and in the local community.

6. Community

We conducted interviews with community groups, merchants, hoteliers, convenience store owners and others affected by the activity of prostitutes on the strolls to determine the nature and magnitude of street soliciting, as well as the effects, if any, of the changes to the law.

7. Social Welfare Sector

We conducted interviews with persons in social welfare agencies, treatment facilities, outreach programs, advocacy groups and legal aid to determine whether the changes to the law had caused an increase in case loads and/or service costs as a result of the new law.

8. Comparative Considerations

We have examined the implementation of Bill C-49 in Calgary, Regina and Winnipeg to learn about differences in the practices of control and in the practices of prostitution in each of these cities. We have also tried to understand the reasons for such differences, and to give an overall sense of whether the law has brought the benefits which were expected to flow from the legislation.

In the next three chapters, we deal with the legal elements concerning s. 195.1--the patterns of arrest under Bill C-49 in contemporary Calgary--and historic Calgary, the perspectives of the key legal actors in interpreting and implementing the Bill in Calgary, and the jurisprudence which has developed in Canada as a result of contested charges heard in various jurisdictions.

II. PATTERNS IN THE ENFORCEMENT OF BILL C-49 IN CALGARY

Introduction: Continuities in Prairie Prostitution

Prostitution in the prairies has been a prominent issue from the time of the North-West Territories Administration of Justice Act in 1886,[1] which followed hard on the heels of the opening of the southern prairies to immigration and settlement with the building of the Canadian Pacific Railway from Winnipeg to the Rockies in 1880-83. Fort Calgary became one of several major centres on the southern prairie artery, and the creation of a red light district in Nose Hill Creek--just north of the city and beyond the jurisdiction of municipal officials--formed the beginning of a long tradition of the world's oldest business profession in Alberta.[2]

Since the enforcement of Bill C-49 in Calgary may well be different than in other cities studied, it is important to explore that enforcement in both a longitudinal and latitudinal framework. First, we will provide a brief analysis of the enforcement of prostitution offences from the inception of the city in 1882 down to 1987, in order to provide a clear knowledge of the longitudinal structure and its meaning down through the past. Second, we will present an analysis of the enforcement patterns--from arrests through the disposition of charges laid--in the decade prior to the enactment of C-49, and then in the two years of its enforcement in 1986-87. Third, we will describe how the police make and process soliciting charges under C-49; and, finally, we will provide a descriptive analysis of the prostitutes from police and court records that will allow the structure of the soliciting business in Calgary to be compared with that of other Canadian municipalities.

Historical Background

The incorporation of Calgary in 1884, in the midst of the railway boom, witnessed a rapidly growing male society dominated by transients and navvies. The city was born into a great crime wave, with few police, courts or experienced judges. The onslaught of the Great Depression of the 1890s only increased concerns about the level of crime, and a new society of immigrant families became hysterical over capital offences in these decades.[3] As a result, the city matured rather quickly, forming a sizeable police force and law enforcement system that

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[1] The Administration of Justice Act, 1885 (Can.), c. 51, amended in 1886 (Can.) c. 51, and proclaimed February 18, 1887.

[2] James Gray, Red Lights on the Prairies (Toronto, 1971), pp. 104-154.

[3] See T. Thorner and N. Watson, "Patterns of Prairie Crime," in Crime and Criminal Justice in Europe and Canada, edited by Louis A. Knafla (Waterloo, rev. ed. 1985), pp. 219-255.

was dedicated to rid the region of serious capital offences, and the poignant nickname of "The Chicago of the North" that the city had acquired. The war against lawlessness--aided by concerned citizens, social reformers and the boosterism of city council--succeeded to a point, and the recorded crime rate of the city's first half century was lower per capita than it would ever be in its second half (see Table 2.1).

Table 2.1

Police Statistics for Calgary*
(Frequencies per annum, per capita)

Decade	Police@	Total Crimes@	Prostitution@
1880s	1/230	1/38	1/2000
1890s	1/601	1/45	1/306
1900s	1/652	1/19	1/465
1910s	1/1295	1/29	1/234
1920s	1/926	1/43	1/691
1930s	1/942	1/25	1/1214
1940s	1/871	1/12	1/30,315
1950s	1/767	1/13	1/42,106
1960s	1/719	1/5	1/36,766
1970s	1/571	1/5	1/34,615
1980s**	1/530	1/5	1/19,394

*Based on the Annual Reports in the Glenbow-Alberta Institute, the City Archives, and the Police Services Museum, Calgary.
**For the years 1980-1986.
@Ratio of police, total crimes, and prostitution offences to the number of citizens.

The city's population was male dominated, and while prostitution was a prevalent business throughout its early decades, the police never warmed to the enforcement of morals offences such as vagrancy, prostitution, gambling, and spitting on the city's streets.[1] Once the crime wave--and fears of its continuance--was over by the turn of the century, the police force submitted to the fiscal conservatism of the taxpayers, and the corps began to decline on a per capita basis until the post-World War Two era. As the charge statistics reveal, prostitution-related offences ranging from the keeping of bawdy houses with the

[1] The Calgary Herald, November 6, 1911.

provision of inmates for customers (frequenters), to street soliciting with night walkers or vagrants, were never enforced with resolve or consistency (see Table 2.2). This approach appears to have been part of a frontier tradition, though it was not unique to the prairies as a similar tolerance was certainly evident in ports like Halifax throughout the last century. Charges would rise in boom times (as 1901-13 and 1924-29),[1]

Table 2.2

Prostitution-Related Charges in Calgary, 1914-1980*

(Frequencies per annum)

Year	Keepers	Inmates	Soliciting	Total	Per Capita
1914	45	25	35	105	1/514
1916	16	12	25	53	1/1066
1939	78	61	86	225	1/387
1941	13	10	131	154	1/578
1949	6	7	6	19	1/6053
1950	2	2	4	8	1/15,625
1980	1	0	7	8	1/62,508

*From M. Elizabeth Langdon, "Female Crime in Calgary, 1914-1941," in Law & Justice in a New Land, edited by Louis A. Knafla (Toronto, 1986), pp. 310-12; and the Annual Reports in the City Archives, and Police Services Museum, Calgary.

and decline with war and depression (1915-19, 1930-39). While the hard data on prosecutions are not available for all of these years, the prosecution of such offences that has been examined over a long period of time never tracked the general level of serious crime, and such offences were not considered important by the general public. Some citizens considered the laws against prostitution as useful as those against sports, entertainment or shopping on Sundays.[2] This perception of the business was part of the region's frontier mentality--a world of entrepreneurial, independent spirit unshackled by the reins of prying or over-mighty governments.

[1] A study of JP returns exclusively for keepers, inmates, frequenters and procurers revealed peak prosecutions of 383 in 1913, and 147 in 1929: Thomas Thorner and Neil B. Watson, "Keeper of the King's Peace: Col. G.E. Saunders and the Calgary Police Magistrate's Court, 1911-1932," Urban History Review, XII (1984): 47-52.

[2] The Calgary Herald, February 1, 1926.

In this respect, prostitution on the prairies never acquired the stigma of the Victorian ethic in the mind of the body politic as it did in other regions.[3] This did not mean, however, that class and male biases did not operate against the protection of women in serious sexual offences.[1] The interpretation of the law concerning prostitution was very broad in this first half century, the offence comprising no less than "common, indiscriminate, meretricious intercourse and not sexual intercourse confined exclusively to one man."[2] Yet the courts in Calgary never gave much sway to that general Canadian interpretation. Chief Justice Walsh, for example, made a major restriction to the vagrancy section of the Criminal Code (s. 238) in 1913 by stating that a woman accused of soliciting men does not have "to give a satisfactory account of her self" to escape being charged, without tangible evidence of having committed the act.[3] And appeals by the Crown were not highly thought of in the Alberta Court of Appeal. Not only was it expensive, but it was considered a waste of taxpayer money.[4]

Therefore, we should not be surprised by the low level of prosecutions throughout Calgary's history. When the city's first great stings were organized by Police Chief Alfred Cuddy, fresh from Toronto in 1912-14,[5] Justice Beck condemned the use of undercover surveillance for such purposes. In a resounding indictment of Cuddy's morality squads, Beck wrote that "It is time, in my opinion, that the mayor and council at Calgary, as representing the citizens generally, should publicly say whether they intend to tolerate such methods."[6] Arrest levels such as Cuddy's would never again be achieved in the city, except for the years of 1937-39 which formed the other aberration in its morals history.[7]

Thereafter, the Calgary police never used the vagrancy provisions of the Criminal Code to control prostitution seriously. In the 1920s, they turned to the Venereal Diseases Prevention Act,[8] which allowed them to arrest women on suspicion of being diseased, have them held for examination within three days,

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[3] Constance B. Backhouse, "Nineteenth-Century Canadian Prostitution Law: Reflection of a Discriminatory Society," unpublished paper (Faculty of Law, Western Ontario, 1983).

[1] For example, Terry L. Chapman, "Sex Crimes in Western Canada, 1890-1920" (Edmonton: Ph.D. Dissertation, University of Alberta, 1984).

[2] R v Rehe (1897), 1 C.C.C. 63 (Quebec QB).

[3] Re Brady (1913), 5 Alta L.R. 400, 3 W.W.R. 914, 10 D.C.L. 423.

[4] R v Brown (1916), Alta L.R. 494, 10 W.W.R. 695.

[5] For Cuddy's regime, see Margaret Gilkes, "Calgary's Police Chiefs and Their Regimes," in At Your Service, Part Two (Calgary, 1975), pp. 28-170.

[6] R v Marceau (1915), 8 Alta L.R. 510, 7 W.W.R. 1174, and 22 D.L.R. 336 (C.A.).

[7] In general, M. Elizabeth Langdon, "Female Crime in Calgary, 1914-1941," pp. 293-312 in Law & Justice in a New Land, edited by Louis A. Knafla (Toronto, 1986).

[8] R.S.C. (1922), c. 61.

and then released if found not infected.[1] In addition to women in the business being seldom charged, their male customers were hardly ever charged at all. The women, moreover, were not stereotyped. They came from British, American or Canadian backgrounds, and were of differing social status and age groups. According to a recent study, the real numbers of women in the business were in a secular decline stemming from World War Two, when increased employment opportunities in non-domestic jobs, fewer male transients, a decline in the male/female sex ratio, and the rise of feminist reformist rhetoric led to a diminution of the business in the city.[2] The combination of a lack of public and prosecutorial energies, and of diminishing vernacular circumstances, can be witnessed in the dramatic decline of prostitution-related charges in Calgary from the 1940s to the present (see Tables 2.1-2.3). It is within this longitudinal context that Bill C-49 must be seen so that its implementation and enforcement can be understood. The observation that those who do not know history are destined to repeat it seems highly appropriate in this area.

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[1] See in general Suzanne Buckley and Janice Dicken McGinnis,"Venereal Disease and Public Health Reform in Canada," Canadian Historical Review 63 (1982) : 33-54.

[2] Langdon, "Female Crime," pp. 304-09.

Table 2.3

Criminal and Prostitution-Related Statistics* for Calgary, 1950-1986

Year	Major Criminal Code Offences	Sexual Offences	Prostitution-Related Offences
1950	4,400	103	1
1960	8,700	291	0
1970	10,964	223	18
1980	33,260	335	8
1984	47,309	919	15
1985	47,216	869	21
1986	51,479	758	105

*Based on the Annual Reports in the City Archives, and the Police Services Museum, Calgary.

Enforcement Policies and Patterns, 1977-1987

The growth of a criminous society belongs to the post-World War Two era. This resulted in part from a definitional expansion of the Criminal Code into almost every area of life coupled with the growth of municipal by-laws and provincial statutes, and the development of a metropolitan society with a cyclical economy with all its attendant problems. The result was a geometrical rise in the total annual recorded crime from one crime per twenty-five persons in the population in the 1930s to one crime per five persons by the mid 1980s (Table 2.1). It was only as recent as the 1970s, for example, that the average year recorded no capital murders. Correspondingly, major Criminal Code offences have more than doubled that rate in the same half-century, while sexual offences in general have kept pace (Table 2.3). The surprising latitudinal context to Bill C-49 is that the prostitution-related charges have gone not only in the opposite direction on a per capita basis, but they have also declined astronomically from approximately one in 1200 to one in 20,000 persons per year (Table 2.1).

The enforcement pattern that the police employed in the 1970s was a city by-law on loitering, which was used much in the same way as the Venereal Diseases Act in the earlier period. This by-law, together with the vagrancy section of the Criminal Code, provided the police with a small measure of control over soliciting in the '70s. It was, however, directed, as before, almost solely against female hookers, and not male hustlers or customers. When these provisions were struck down in the courts, street prostitution in Calgary became a virtually non-regulated business. Thus, when Bill C-49 was introduced in December 1985, the police regarded it as providing them with that small measure of control which they had always possessed in the past. And in spite of those months when C-49 was

inoperative following decisions in Calgary and Edmonton Provincial Courts--decisions reminiscent of past judicial scepticism over the policing of street soliciting--the numbers of female hookers charged was similar to that under the previous control measures of the 1970s. There was, however, a new dynamic in this enforcement pattern. Hustlers as well as customers were now included (see Table 2.4). The sexual bias which had marked the history of sexual offences throughout Alberta was no longer to be directed solely against women, although the patterns hardly reflected a strict equity in the proportion of prostitutes and customers arrested.

Table 2.4

Soliciting Statistics for Calgary, 1977-1987* : Numbers of Charges

Year	Hookers	Hustlers	Male Customers	Totals
1977	67	0	3	70
1978	22	0	0	22
1979	68	0	0	68
1980	0	0	0	0
1981	0	0	0	0
1982	0	1	0	1
1983	0	0	0	0
1984	0	0	0	0
1985	2	0	0	2
1986	55	15	23	93
1987	53	0	3	56

*Based on the Police Records files, Administration Headquarters, Police Services, Calgary.

Calgary Police Service Strategies: Stings And Identification of Prostitutes

To understand the patterns of enforcement, one must appreciate the structure of the police service and its strategies vis à vis prostitution. Control of prostitution in Calgary is the exclusive domain of the Vice Unit. In 1986-88 the unit consisted of 10 male detectives and a staff sergeant. The Vice Unit has had responsibility for prostitution (4 detectives assigned to this), escort services (2 detectives), Asian crime gangs (2 detectives), and gambling (2 detectives). The detectives also investigated complaints of obscene publications and spent a substantial amount of time interviewing "exotic entertainers" as required by the city's new Exotic Entertainers By-Law. This law was passed in 1985 following allegations that nude dancers were also working as prostitutes, and enforcement of the by-law was seen as a necessary complement to the control of prostitution.

Over the last decade, the major initiatives in terms of arrests have occurred in the context of "sting operations." In these operations, police have employed male and female undercover decoys to intercept public offers of sex for money from both customers and sellers on Calgary streets. The male police pose as prospective customers; female officers pose as prostitutes. The object in both cases has been to intercept inculpatory offers of sex for money. Traditionally, the stings have been a substantial team effort. In the case of stings against the female prostitutes, four or five undercover policemen driving in unmarked cars approach different hookers on the stroll. At the end of these undercover conversations, the male officers would close the deal and recommend its consummation in their hotel--usually the Holiday Inn, International or Westin. Requesting the woman, or women, to allow them to drive to an all-night cash dispensing machine for payment on the way to the hotel, the officers would then drive over to, and park behind, the J. J. Bowlen Building to use the dispensing machine located there. At that point, the woman or women would be arrested and turned over to the detectives waiting there to receive them. To prevent the women from warning other hookers, they are held in vans or buses until the sting is called off. Up to ten or twelve officers might be involved in the operation. In stings against male prostitutes, the decoys park near the male stroll and wait to be approached by the hustlers. This is typical of the conduct of the genuine customers on this stroll which tends to be lower key than the active shopping observed on the female stroll.

Apprehending customers is a bit more complex, especially from the point of view of personnel and security. Where the prostitute sting might use four or five undercover males, the customer sting typically employs only two female decoys at a time. There are fewer females than males available for the work, and the work is somewhat more complex. The female decoys operate with a body microphone which transmits a signal to an undercover unit which records the conversation between the decoy and the customers. The female decoys refuse the offers from customers, and the latter are pulled over by uniformed officers several blocks from the encounter. A backup unit monitors the decoys to ensure their safety. All suspects arrested in stings are typically issued appearance notices and released. Those from out of Alberta are usually held for appearance before a bail court.

Some prostitutes are arrested in other circumstances. For example, detectives working in the area of the stroll on non-prostitution matters appear to make arrests if they are approached by a female prostitute in the course of other work, but this occurs quite infrequently. The majority of arrests in the last decade have been made in sting operations designed to target specific sectors of the trade. The one area which has received the least police attention has been the use of decoys to entrap male customers seeking homosexual encounters. In 1986-87, there were seven customers arrested as a result of such operations. The sting operations tend to

be fairly infrequent, but can be relatively large-scale operations. However, this is not the only sort of policing undertaken by the police service.

In Calgary the uniformed police under the direction of the Vice detectives have initiated a vigorous program to identify or "ID" the women. When the police see a prostitute not known to them, he or she is asked to accompany the police to be photographed, and to have identification checked. This is done to facilitate identification in case of injury or death, to control juveniles, to identify "state-side" prostitutes working illegally in Canada and to identify those wanted by the police on outstanding warrants. Failure to cooperate usually results in surveillance of the subject by the police. By parking the squad car and simply watching the traffic, police scare off customers and the other prostitutes become aggravated since the presence of the police works as a collective embargo on everyone working the stroll. Compliance is nearly universal. Consequently, despite the low levels of arrest as a result of infrequent sting operations, the Calgary police have compiled a relatively thorough intelligence on those working the Calgary streets and the relationship between the hookers and the police appears to be positive. The police also take regular counts of the number of persons on view on the different strolls. According to police estimates, the average number of prostitutes at Stroll One on 2nd and 3rd Avenues SW in 1987 was 21.21 per count; at Stroll Two, hustlers on 13th and 14th Avenues SW, 1.62 per count; at Stroll Three, hookers on 9th Avenue at 5th Street SE, 2.21 per count; and at Stroll Four, hookers on 10th Avenue and 10 Street SE, 1.62 per count. These counts reflect a daily average including peak and slack hours and reflect the comparative variations in the levels of activity in the different strolls.

The enforcement pattern outlined in Tables 2.5a and 2.5b produced uneven results from the perspective of the numbers of prostitutes and customers arrested. The police made considerable publicity in the autumn of 1985 concerning how they planned to vigorously enforce the soliciting law, and clear the streets of Calgary of both male and female prostitutes. The days of Chief Cuddy were going to be revisited. The police and the Crown prosecutor's office were going to apply the Bill specifically as "a nuisance management tool" to resolve the problems caused by soliciting. The occasional complaints of citizens would now be resolved, and hookers, hustlers and their customers would come to know the meaning of police surveillance. Eighty-four percent of arrests occurred in four stings in 1986 and in 59% in one sting in 1987.

Table 2.5a

Number of Charges Resulting from Calgary Police Stings and Other Operations Under Bill C-49

Date	Hookers	Hustlers	Customers	Total
1986:				
Feb 6-7	22			22
Feb. 20	1			1
Mar. 6-8			9	9
June 6	1			1
June 11-16	27		10	37
July 25-27		7		7
July 30-Aug. 3			3	3
Aug. 18-19	2			2
Aug. 28-31	1	8	1	10
Sept. 23	1			1
1986 Total	55	15	23+	93*

+Includes 16 heterosexual and 7 gay or bisexual customers.
*Includes 88 persons; four females prostitutes charged twice in 1986.

Table 2.5b

Number of Charges Resulting from Calgary Police Stings and Other Operations Under Bill C-49

Date	Hookers	Hustlers	Customers	Total
1987:				
Aug. 11	1			1
Aug. 18-19	30		3	33
Sept 21	1			1
Oct. 2	6			6
Nov. 10-13	6			6
Nov. 18-21	5			5
Nov. 27	3			3
Dec. 5	1			1
1987Total	53		3++	56**

++ All heterosexual customers.
**Includes 52 persons; 4 female prostitutes charged twice in 1987. Since some of those arrested in 1987 were also arrested in 1986, it would be misleading to add the 1986 persons figure to the 1987 persons figure in order to calculate the total persons figure for 1986-1987. In point of fact, there were 134 persons arrested in total during the two years.

1986 & 1987 Totals	108 (93)	15	26	149 (134)***

***Includes 134 persons; two female prostitutes were arrested three times, eleven were arrested twice, bringing the total number of female prostitutes arrested to 93. No customers or hustlers were arrested more than once.
Based on Police Records files, Administrative Headquarters, Police Services.

How do we interpret the patterns of arrest? The number of persons charged appears to be small in comparison to the newspaper reports of aggressive arrest policies in cities like Toronto which have resulted in thousands of charges during the same time frame. Our interviews with the vice detectives revealed that there were several relevant factors which should be weighed in trying to interpret the numbers of arrests. First, the levels of arrest in Calgary were realistic given the modest levels of civic concern expressed in the city. The areas negatively impacted are quite small, and the objective of the police service has been to confine the trade and to control its boundaries--not to put all the hookers and customers in jail. We were advised that the latter objective would be unrealistic, would make the trade more surreptitious and less open to control, and would invite criticism from the community since there is an opinion widely shared in the city, expressed commonly by vice detectives, by police commissioners and by members of the public that the prostitutes themselves are victims of their backgrounds and their chosen line of work. Revolving door arrests, particularly when they have little consequences in curtailing prostitution, would seem perverse. A related consideration is that a policy of daily arrests would put very high demands on personnel resources entailed by the sting operations and, without an expansion of the numbers of detectives assigned to vice, would negatively impact competing areas of vice control. No doubt, if there were tremendous public demands for more service in this area, we would expect the political allocation of resources, but this has not been the case in Calgary. Also, the police service does indeed carry out a daily form of control in the on-going identification program conducted by uniformed officers under the direction of the vice unit. The policy has been used to keep tabs on the street workers, to reinforce the boundaries of the main stroll, and to keep pimps off the stroll and out of view, thereby minimizing the amount of tension on the streets. It is also evident from Table 2.4 that even during the late 1970s the Calgary Police Service laid relatively few formal charges for soliciting.

In this context, the record of enforcement in 1986 and 1987 suggests a pattern designed less to clear the streets of prostitutes than to establish a small measure of control. The Vice Unit went about its work in a fairly systematic fashion. The first sting in February was for hookers only, the next major one in March for their customers, and both groups were targeted for a sting in June. The police then turned their attention to the hustlers with stings in July and August. In seven months in 1986 the number of arrests made by the Calgary vice squad for

soliciting (93) began to approach their previous banner year at the advent of World War Two (131). In September, however, s. 195.1 was struck down by the Provincial Court,[1] and a policy directive was issued in the next month from the Attorney General's Department placing a freeze on the processing of C-49 charges--and thus the stings. When the Alberta Supreme Court reversed the lower court's ruling and reinstated the authority of C-49 in July 1987,[2] the police promptly replied with another major sting against hookers which resulted in more arrests in one night than have ever been made for soliciting: 30 hookers. The sting against the customers on the following night was called off after a pimp and some prostitutes confronted and tried to intimidate the undercover policewomen, and caused an incident that resulted in charges of causing a disturbance, and cancellation of the operation. For the rest of the year, the police employed much smaller scale operations, and left the customers alone. With the notice of appeal of the September judgment to the Supreme Court of Canada in the winter of 1988, a freeze was put on the active processing of C-49 cases. Relatively few new arrests were made, and most cases in the court system were postponed at the advice of the Crown.

Processing C-49 Charges Through the Criminal Justice System

There were 93 arrests for soliciting in 1986 and 56 in 1987, making a total of 149 charges. We examined the records to determine from the addresses and dates of birth whether anyone was arrested more than once. Over the two year period, eleven female prostitutes were arrested twice, and two were arrested three times. Consequently, the 149 charges were laid against 134 different persons. Among the customers, we did identify some names occurring more than once, but these proved to be different persons. As can be seen from Table 2.6, the Calgary courts have put most cases on hold until the Supreme Court determines the constitutionality of the law. In both years, the largest category of cases are those in progress. The second largest category--pleading guilty--occurred both during the period when the constitutionality of the law was upheld, but also when the constitutionality of the law was under appeal but where the accused insisted on having the matter disposed of to get it out of the way. In our court observations, some of the accused objected to the remanding of cases and asked, contrary to the advice of the bench, that their cases be heard. In these cases, the accused typically pled guilty without representation. Only 43 out of 149 cases have resulted in convictions--less than 30%, as of May 1988. Many of the cases in progress originated in February, 1986, and, as a group, the "in progress" cases have typically had ten to fourteen court dates noted on the court record. It is expected that the majority of arrests from 1986 and 1987 will not be resolved by trials until the fall of 1988--in some cases,

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[1] Bear, Wightman and Gordon (1986), 47 Alta L.R. (2d) 255, on September 25.

[2] Jahelka; Stagnitta (1987), 36 C.C.C. (3d) 105 (C.A.), on July 15.

thirty or more months after the arrest. Most of those charged have been brought before the Police Court which has jurisdiction over trafficking and soliciting offenses; juveniles were all ordered before the Family-Youth Court, and prostitutes with oth - charges outstanding were sent to the Provincial Court.

The recurrent appearances seem to have taken their toll on the attendance records of the accused, since, as of May 1988, some 10% of all cases had been terminated by the issuance of an arrest warrant for failure to appear in court. It would be a mistake to infer that the court records indicated that none of the warrants that were issued resulted in an arrest, since, aside from the 10% noted, warrants were issued in the course of many cases whose final determination was "pled guilty", "in progress" or "quashed". This occurred in a least eleven 1987 cases--warrants were issued for a failure to appear, and were subsequently recalled, sometimes because reasons were given by counsel explaining the non-appearance, and sometimes after a bond was posted to assure future appearances. A final note of clarification. A substantial number of cases--12--were dismissed by the bench or withdrawn by the prosecutor due to technical problems in the charge. Ironically, the longer the "in progress" cases are delayed, the greater the chances that evidence will go missing, witnesses will be unavailable, and that future prosecutions will subsequently become less tenable, and more likely that cases will be withdrawn, dismissed or quashed.

Table 2.6

Disposition Statistics for All Charges Under Bill C-49, 1986 and 1987*

	1986	1987	Totals
Case in Progress	37	29	66
Pled Guilty	27	14	41
Found Guilty At Trial	1	1	2
Found Not Guilty at Trial	3	0	3
Quashed, Withdrawn or Dismissed	7	5	12
Warrant For Arrest Issued			
For Failure to Appear in Court:			
a. after one or more appearances	11	3	14
b. at first appearance date	1	0	1
No Information in S-G Records**	6	4	10
Totals	93	56	149

*As of May 1988. Based on records of the Solicitor General of Alberta, Provincial Court House, Calgary.

**The Solicitor General's Department files cases under a docket number. The police file under an occurrence number. Using information from police records--name, date of birth--we examined the computerized records in the SG's department and simply failed to find ten cases. These cases were in all probability not lost, but may have been keyed in with a misspelling or different date of birth--and were not retrievable. Unlike the police records, a global search by type of charge was not possible.

What were the sentences given to the 15 accused in 1987 and the 28 accused in 1986 who were convicted? In the following two tables, we describe the sentencing outcomes, and in the case of fines, indicate the range. On the whole, the judiciary employed the fines-or-time-in-jail option most frequently; incarceration, probation and community service orders were rare. The one woman who was sentenced to give thirty hours of charitable service to the YMCA refused to fulfill the sentence and thus was fined. (Perhaps the court chose the wrong gendered institution.) Of the 43 persons convicted, 36 were given the option of paying a fine. However, as Table 2.7 indicates, many of the fines were unpaid, and resulted in the issuance of warrants of arrest. This could result effectively in incarceration for 10 out of the 43 persons convicted. However, as of May, 1988, only one person had actually been taken into custody as a result of failure to pay a fine. Generally, the accused is given a month to pay the fine. If it is unpaid within the period, a warrant of

committal is issued to apprehend the accused to serve the time specified in the sentence. Of the two persons sentenced to jail--a juvenile hustler on a first offence before the Youth Court and a 19 year old hooker tried in the provincial court--the first (who pleaded guilty and represented himself) received 30 days, the second received 10 days. In those cases where a period of incarceration was specified in lieu of a fine, the time varied from 2 days to 45 days, although 30 days was the period most frequently specified. The only person to receive an absolute discharge was a male customer, a 35 year old teacher, who pled guilty to soliciting a female decoy.

Table 2.7

Sentences Given On Conviction
All Charges Under S. 195.1 in 1986 and 1987*

		1986	1987
Fine or Time	(Paid as Fine)	19	8
Fine or Time	(Resulting in Warrant of Committal for failure to pay fine)	4	4
Fine or Time	(Resulting in Actual Committal)	1	0
Fine and Probation		2	0
Probation Only		0	1
Incarceration		1	1
Absolute Discharge		1	0
Sentence In Process (presumed fined)		0	1
Total		28	15

*As of May, 1988. Based on records of the Solicitor General of Alberta, Provincial Court House, Calgary.

As for fines, the stiffest fine--$500 or 30 days in jail--was given to a 40 year old professional librarian who pled guilty to soliciting a male decoy. A 51 year old journalist was fined $400 or 30 days under similar circumstances. There were 26 sentences specifying fines in 1986 and 12 in 1987. In Table 2.8 the fine levels for these 38 sentences are reported, showing frequencies for customers and prostitutes separately.

Table 2.8

Fines of Persons Arrested in 1986 and 1987 and Sentenced Under s. 195.1

	Prostitutes	Customers
Amount Unspecified*	6	0
$50	1	0
$100	5	2
$150	5	2
$200	1	4
$250	2	1
$300	2	2
$350	1	0
$400	1	2
$500	0	1
Totals	24	14

*Fine were most frequently unspecified in cases where they had not been paid, and were not noted in the Solicitor General's record. Also, some of the fines in the Youth Court were deemed sensitive information and were not accessible.
Based on records of the Solicitor General of Alberta, Provincial Court House, Calgary.

The most frequent fine given to prostitutes falls in the $100 to $150 range. Customers appear to face a marginally higher tariff--in the $200 range--and the gay or bisexual customers face a marginally higher penalty. However, the numbers of sentences examined is so small that no real inferences can be drawn to establish that this is a systematic pattern in the Calgary courts. The range of penalties may reflect nothing more than individual variations in the judiciary.

Case Attrition

Is it possible to give an overall assessment of the effectiveness of the law in terms of outcomes? Criminologists frequently conceive of this issue as one of the "attrition" of cases as they move through the "crime funnel." Because of the appeal of several convictions to the Supreme Court and the decision of the Crown to postpone prosecutions, the attrition has been unusually high, though this is neither a permanent situation, nor necessarily a "loss" of cases. The following table illustrates the points of attrition and calculates how serious they are in terms of their contributions to the overall outcome.

Table 2.9
Attrition of 195.1 Cases
In Calgary, 1986-1988

Decision Points:		Percent Shrinkage Between Points	
a. Initial Case Intake =	149 Charges		
Lost Cases= 9		Between a and b:	6.5%
b. Known Cases =	139		
Cases Remanded and in Process = 66		Between b and c:	47.5%
c. Cases Scheduled for Court Appearance =	73		
Failure of Accused to Appear = 15		Between c and d:	20.5%
d. Cases Actually Brought to Court =	58		
Unsuccessful Convictions* = 15		Between d and e:	25%
e. Tried and Convicted =	43		
Unpaid fines = 8		Betweeen e and f:	18%
f. Fine (paid), Incarceration or Probation =	35		

*Cases quashed, dismissed withdrawn, or accused found not guilty

The largest source of attrition is the delay in trials caused by the appeal to the Supreme Court of Canada. If the Court strikes down the law, almost half the initial charges will be dismissed--and 43 convictions with associated fines and incarcerations will appear to have been for naught. On the other hand, if the law is upheld, then the 47.5% attrition level identified in Table 2.9 will cease, and all the cases should be brought to court. Then the other factors--failure to appear by the accused, problems in the charge or the evidence, innocence of the accused--will become the major sources of attrition. However, these are factors which plague every area of the Criminal Code. Even allowing for this, as the completed cases show, at each decision point, over 80% of cases make it to the subsequent point. What does this suggest? Most of the attrition seems to occur prior to court appearances. If the law is upheld, there is little evidence in these materials to suggest that it will be ineffective--at least from the point of view of registering convictions. Whether that does anything more than pressure the accused to raise fine money is another matter. Another concern regarding sentencing is that, at present, sentences are relatively benign. As more persons are returned with prior convictions, there <u>may</u> be a greater utilization of stiffer sentences and incarceration, which will create pressure on the accused to resist convictions. In that scenario, we would predict that, other things being equal, the numbers of not guilty pleas will rise, and the overall pattern of convictions will tend to fall as the prospect of a more serious penalty increases.

Statistical Analysis of Prostitutes Charged Under C-49

Who are the people that have been arrested? What do the records reveal in terms of their social characteristics? Bill C-49 was premised on the idea that customers and prostitutes, males and females, would be equally liable to arrest and conviction. We have already established variations in the arrest rates of hookers, hustlers and customers. What other information is there about the persons who have been arrested? As noted earlier, there were 149 charges against 133 separate individuals, including 108 prostitutes. Table 2.10 outlines the gender and racial characteristics, as well as city of residence. Prostitutes arrested under Bill C-49 have been overwhelmingly white, female Calgarians.

Table 2.10

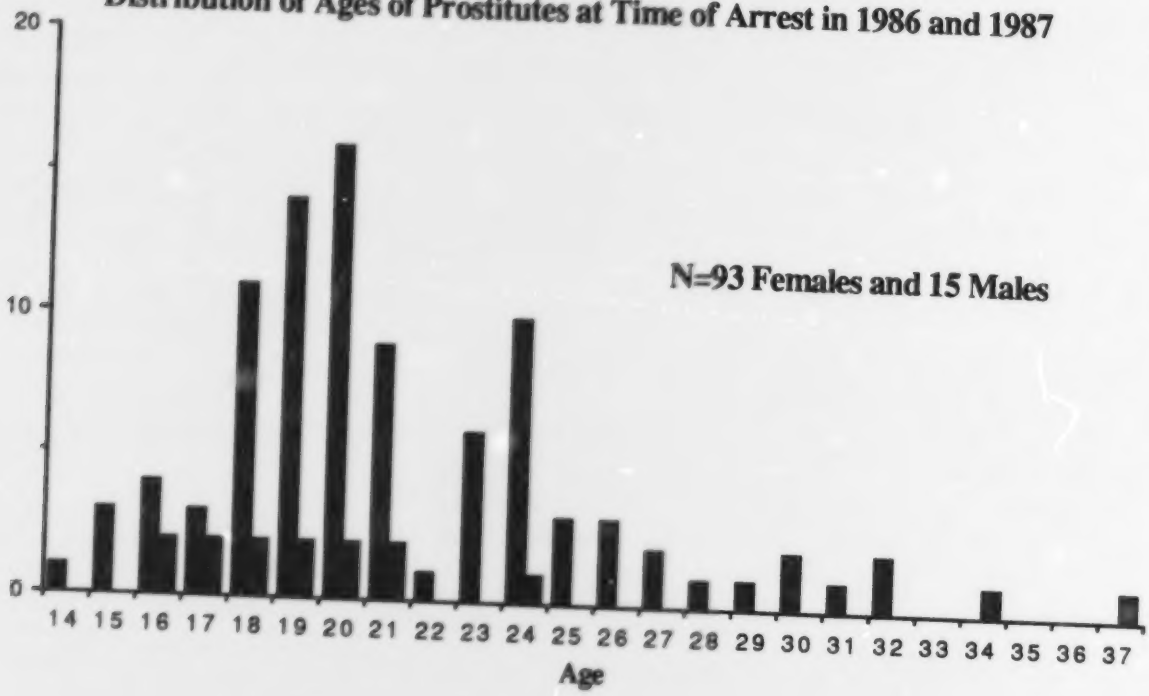
Prostitutes' Arrest Statistics
Under Bill C-49, 1986-1987
For the 108 Persons Arrested as Prostitutes

		Number	Percent			
Gender:	Males	15	13%			
	Females	93	87%			
Race:	Whites	87	80%			
	Blacks	18	17%			
	Natives	3	3%			
Residence:	Calgary	99	90%	Edmonton	4	3.7%
	Vancouver	3	2.8%	No Address	2	1.8%

The next fact that emerges when we look at the age distributions of the prostitutes arrested under Bill C-49 was that they were remarkably young. The median age for females was 20, for males 19.

Chart 2.1

Distribution of Ages of Prostitutes at Time of Arrest in 1986 and 1987



We obtained information from the Calgary Police Service regarding soliciting arrests back to 1977. This allowed us to compare the age distributions in the late '70s and the late '80s. Table 2.11 suggests that the only notable difference is that there appeared to be more in the under eighteen group in '86 and '87 than in the previous period.

Table 2.11

Age Distribution of Prostitutes Arrested Under Bill C-49, 1977-1987

Ages	1977-1979 Number	Percent	1986-1987 Number	Percent
Under 18	7	4%	15	14%
18-20	74	47%	47	44%
21-24	49	31%	29	27%
25-29	19	12%	10	9%
30-41	8	5%	7	6%
Totals	157		108	

Age of Young Prostitutes

In the former years, fifty-one percent of the prostitutes charged were under age twenty-one, and in the last two years with C-49, sixty percent were under that age. Table 2.12 breaks the dates down annually pointing to a more significant rise in the under eighteen category in 1987.

Table 2.12
Age Profile of Young Prostitutes in Calgary, 1977-1987

Year	Totals	Percent under Age Twenty-One	Percent under Age Eighteen
1977	67	46%	1.3%
1978	22	54%	4.5%
1979	68	57%	8.0%
1986	66	54%	8.0%
1987	49	49%	18.0%

The problem of juveniles is discussed in the chapter on the Social Services. But we should state here that, according to the Chief of Police and several Crowns, the police have attempted to selectively target the juvenile prostitute in the implementation of C-49. Therefore, the large number of juveniles who have been caught in police stings may be attributable--in part--to this enforcement agenda. While acknowledging that the jump from the previous range of one to eight percent in 1977-1979, to eighteen percent in 1987, is indeed precipitous, the selective enforcement explanation is not entirely convincing. In the largest sting operation conducted in August 1987, some 26% of the females arrested were under 18--not 18%, the overall 1987 figure--yet this was a blanket operation designed to target all the hookers on view, not particularly the adolescents. If the policy over the course of the second half of 1987 was to target adolescent prostitutes on a selective basis, it was less successful than the blanket sweep in August. Consequently, it is impossible to determine precisely the respective role of real declines in the average age, and changes in the targeting of younger adolescents.

Characteristics of Customers

We have spoken to this point only about the prostitutes. The customers who were charged were virtually all classified as white males; two were Asian. Twenty out of the twenty-six gave Calgary addresses (77%); the balance were, for the most part, on business from out of town. In terms of age, the customers were much

older than the prostitutes: the median age was 37, and ranged between 18 and 64. Sixteen out of the twenty-six customers were aged from 26 to 44. In terms of occupation, it is difficult to discern clear, systematic trends. In terms of a breakdown, 50% (n=13) would be classified as employed in white collar work (two teachers, two students, a journalist, a director, various managers and salesmen), 38% (n=10) as blue collar (a truck driver, a technician, painters, an oil rig worker and three labourers), and 12% (n=3) were unable to be classified due to a lack of information in the arrest records. There were no noticeable trends in the ethnicity of the names of the accused. There were virtually all gainfully employed, and appeared to represent a cross-section of the community. Police data gave no information regarding marital status.

Conclusions

The patterns of enforcement reported here suggest that the Calgary Police Service has made only moderate use of their arrest powers under s. 195.1, especially in comparison with other urban centers. Though there are good reasons associated with successful constitutional challenges to the law that might explain these levels of arrest, the longer term arrest record from the late 1970s, and even earlier, suggests that this has been the consistent pattern of enforcement. However, it is clear that in addition to conducting the systematic stings against various components of the street trade, the police have relied on more informal, practical procedures to control the location of soliciting, to identify those involved in the business and to attenuate the negative impact of the strolls on the wider community.

III. BILL C-49 IN CALGARY: LEGAL RESPONSES OF CRIMINAL JUSTICE PERSONNEL

Introduction: The Concerns, Experience and Practices of the Legal Interests

Interviews have been conducted with, and information gathered from, the police, Crown prosecutors, members of the criminal defence bar, Provincial Court Judges, Youth Court personnel and Legal Aid. This chapter reports on the legal and practical difficulties attending the implementation of Bill C-49 in Calgary from the perspectives of the various legal interests. In addition, some possible reforms responsive to these difficulties have been suggested by these parties and are noted here.

Section 195.1 of the Criminal Code is viewed by the police and employed by them, in essence, as a nuisance management tool. As recorded in the previous chapter, there has been a relatively sparing use of the arrest powers created by s. 195.1 in favour of a more general management approach to street prostitution. There is a prevalent view among police, prosecutors and politicians that street prostitution is a fact of life which cannot be eradicated but which can be, to a large extent, regulated. Consequently, police have shown a greater concern for the siting of the major stroll, the maintenance of its limits and minimizing the negative impact on other areas of the city core. Where other cities make arrests on a continuous basis, Calgary has opted for a program of more informal contacts with the prostitutes through the identification program described earlier, and through frequent daily monitoring of the strolls by uniformed officers in patrol cars. This relatively benign approach is consistent with the licencing of escorts and exotic dancers, both of which programs combine strong police intelligence about the industries and their participants with a generally tolerant management philosophy. Consequently, the anti-soliciting law gives the police leverage to negotiate a practical resolution of problems caused by soliciting for the purposes of prostitution. In addition, evidence of juvenile prostitution can also result in targeted enforcement to remove the juvenile from the strolls.

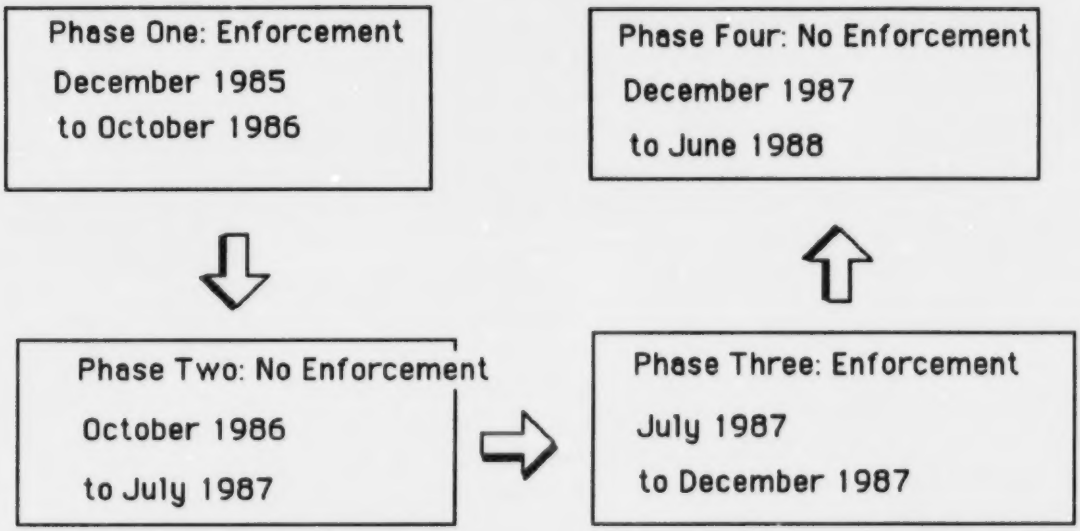
Oscillations in Enforcement

Section 195.1 came into force on December 20, 1985. No charges were laid in Calgary until early February of 1986. On September 25, 1986, concurrent Provincial Court decisions were handed down in Calgary and Edmonton striking down s. 195.1 as violative of the Canadian Charter of Rights and Freedoms.[1] The Crown took immediate steps to appeal, but a policy directive from the Attorney General's Department on 28 October 1986 put a freeze on active processing of s.

[1] Bear, Wightman and Gordon (1986), 47 Alta. L.R. (2d) 255 (Cioni P.C.J., Calgary); Jahelka; Stagnitta, Chisholm P.C.J., Edmonton.

195.1 charges through the court system until the appeal was dealt with. The Alberta Court of Appeal reversed the Provincial Court and upheld the constitutional validity of the section on July 17, 1987.[1] The freeze was then lifted and active processing of charges began again. However, on January 25, 1988 the accused filed their notice of appeal to the Supreme Court of Canada. On October 2, 1987 the Supreme Court of Canada had granted leave to the Crown to appeal the decision of the Nova Scotia Court of Appeal in Skinner which also raised the identical issue of the constitutional validity of s. 195.1.[2] In light of this Supreme Court of Canada activity, there is now a further administrative freeze on active processing of s. 195.1 charges throughout the Alberta court system.

Diagram 3.1 Oscillations in Enforcement



The end result is that in Calgary there have only been two relatively short periods during which s. 195.1 charges have been actively processed since the section came into force. Those periods cover approximately February 1986 through October 1986, and July 1987 through January 1988. There have been virtually no contested trials on the merits during either of those periods. Cases have either been disposed of by a plea of guilty, or have been argued solely on the constitutional validity of the section. Most cases have been adjourned pending appellate resolution of the constitutional validity issue. There are cases presently in the system which may raise substantive and evidential issues if and when they come to trial, but as

[1] Jahelka; Stagnitta (1987), 36 C.C.C. (3d) 105.

[2] Skinner (1987), 35 C.C.C. (3d) 203. The development of jurisprudence interpreting s. 195.1 from the various provincial jurisdictions, and the constitutional and evidentiary issues which have been identified in the decided cases, are outlined in the next chapter.

matters now stand, there is no courtroom experience in Calgary of the sorts of substantive and evidential issues that have arisen at trial in such jurisdictions as Vancouver and Toronto. Accordingly, it should be stressed that the concerns of Calgary's legal community about s. 195.1 are very much of a hypothetical or intellectual nature rather than founded in actual practice since relatively few cases arising from s. 195.1 arrests have been brought to trial, and virtually none has been contested. Even the police have no practical experience of s. 195.1 in a trial environment, since no member of the Calgary police service has yet had to testify in a trial involving s. 195.1. Consequently, the following description are meant to identify the current attitudinal perspectives of the legal actors.

Arrest and Bail as Strategies of Control

The normal practice of the Calgary police in enforcing s. 195.1 is to make what may technically be an initial arrest to enable the necessary paperwork to be done, and to clear the street at least temporarily before releasing the accused, whether prostitute or customer, with an appearance notice. Only in relatively few cases is the accused detained to be brought before a justice for a show cause hearing. The law of arrest and bail is used expeditiously for its primary purpose of ensuring that the accused will appear in court as required. There is no general attempt to use the law of arrest and bail as a mechanism for keeping prostitutes off the streets either by having them detained or by having them released on conditions designed to prevent their immediate reappearance on the streets. As Table 3.1 shows, three-quarters of all persons arrested were released on an appearance notice.

Table 3.1
Arrest and Release Statistics for 1986 and 1987
All Charges Under s. 195.1 (n=149)

	1986		1987		Totals	
Release on Appearance Notice	71	(76%)	43	(77%)	114	(76.5%)
Remanded to Bail Court	8	(8%)	13	(23%)	21	(14%)
Warrants Issued for Arrest*	13	(14%)			13	(9%)
Remanded for Youth Court	1	(1%)	—		1	(.67%)
Totals	93		56		149	

*All warrants were issued to hustlers in a crackdown in the summer of 1986. All accused subsequently released on an appearance notice following arrest.

In 1986 warrants were used in a sting against hustlers who approached undercover decoys on the gay stroll. Since the stroll is so small, their removal would have been obvious to the other hustlers, and the operation would have

become evident to everyone on the street. Consequently, they were arrested subsequent to the operation by warrant, then released on an appearance notice.

It appears that the Calgary police have been basically adverse to using the arrest and bail provisions as a vehicle for pre-trial prevention and deterrence in the same fashion as we observed in Winnipeg, and as appears to be the case in some other major centres. Though they have had success in particular cases in securing bail conditions that in effect amount to "cease and desist" orders against particular young persons working as prostitutes (and receive the full cooperation of Crown counsel when seeking the imposition of such bail conditions,) this pattern is clearly an exception. Indeed, it appears that Crown counsel have given legal advice to the police that there is no impediment to much *greater* use by the police of such an approach. However, the police have taken a more conservative approach. As the next table shows, the reasons for detention in custody are quite narrow: persons from out of the jurisdiction, persons facing outstanding warrants for arrest, persons refusing to identify themselves and juveniles in need of protection constitute virtually the entire population of persons detained.

Table 3.2

Reasons for Detention in Custody From Charges Under s. 195.1 (n=22)

	1986	1987	Totals
Address Out of Jurisdiction*	6	2	8
Driver Intoxicated	1	0	1
Refuse to Produce ID**	1	5	6
Juvenile in Need of Protection	1	1	2
Outstanding Warrants***	0	5	5
Totals	9	13	22

*All out of province addresses.
**Also includes persons unable to produce any identification, and persons found to be lying to the police about their identity. In 1987, 3 out of the 5 accused were 15 year old female prostitutes.
***All for prostitution, three in the same jurisdiction. In 1986 there was no notation in police arrest records of repeat arrests for soliciting during that year. In 1987 all the repeat arrests were noted.

There is a perception in police circles that the law does not admit of as wide a use of bail conditions as Crown counsel suggest in s. 195.1 cases. First of all, the police appear to draw a distinction between local prostitutes and those not normally resident in Calgary, being of the opinion that there is no justification for doing other than releasing a local prostitute or customer whose identity and residence are established, in the absence of special circumstances suggesting the likelihood of

failure to appear in court. On the other hand, where an accused gives a permanent residence quite distant from Calgary, this may found a sufficient inference of failure to appear to justify bringing the accused before a justice to seek either detention or release on conditions. However, even persons with addresses in Medicine Hat and Edmonton are routinely released on an appearance notice.

The police are of course well aware that it is legally permissible to detain an arrested person to be brought before a justice for a show cause hearing if it appears necessary to "prevent the continuation or repetition of the offence", and that in turn this may justify a release order with a "cease and desist" condition or even detention. However, this appears only to have been done with adolescents. The following table reports the outcome of persons detained in custody. The majority held were simply released with arrangement of bail. Four were released on a recognizance, though it is unclear from the records how many of these included area restrictions. Finally, of the 22 taken into custody, only 2 were actually held. One was a Vancouver prostitute with previous outstanding warrants; she was arrested on Friday night, spent the weekend in jail and raised bailed on a Monday morning. The second was an adolescent without any identification; she proved to be a 16 year old from Edmonton with outstanding warrants arising from previous soliciting charges there; she was denied bail, held for a week, then pleaded guilty, was released, but went missing before the sentencing hearing.

Table 3.3

Disposition of Persons Held in Custody Following Arrest From Charges Under s. 195.1 (n=22)

	1986	1987	Totals
Released on Bail*	8	5	13
Transferred to Social Services**	1	1	2
Recognizance Given by Accused	0	4	4
Accused Held for Trial***	0	2	2
Outcome Unknown	0	1	1
Totals	9	13	22

*Includes two accused in 1987 who also gave a recognizance.
**Order as a result of appearance in Youth Court. Both accused under age 16.
***One spent seven days in custody, the other spent two.

Recidivism and Evidence of Criminal Record

In 1986 none of the police arrest reports noted prior arrests in the same year; in 1987, every successive arrest of the same accused was noted in the file.

Interviews with the police revealed that they were becoming more concerned about the problem of recidivism and its possible consequences for penalties as well as for release on bail before trial. In fact, as Table 3.1 showed, the percentage of cases held for bail jumped from 8% in 1986 to 23% in 1987; and as Table 3.2 showed, in 1987 outstanding warrants became a leading reason for remanding in custody. The problem seen by the police in the greater use of the bail provisions to enforce conditions of release with repeat offenders before trial ("cease and desist" orders) and in seeking graver penalties upon conviction of recidivists following the trial turns on two issues. First of all, the police are not satisfied that it is legally permissible or appropriate to infer from the fact that, if a person is charged under s. 195.1 with soliciting, that person will, if released, solicit again prior to appearance in court. Of course, if the prostitute makes an admissible statement that he or she will indeed reappear on the stroll to solicit, that may suffice. This has occurred in Calgary, and at least one person has been denied bail because of it. In practice, however, the police seem to feel that unless they can prove that the prostitute already has a criminal record for soliciting or for a closely related offence, and that that record is relatively recent, it will not normally be possible to establish the requisite likelihood of repetition. In addition, since enforcement has occurred via infrequent sting operations (as opposed to policies of daily arrest), in the case of persons arrested during a release for a prior charge, it is difficult to infer--as a matter of admissible evidence--whether they have been continuing in the offence.

This takes us to the second issue. In relation to local prostitutes, the police may very well know as a practical matter that a particular prostitute does indeed have a recent relevant record. Formally to prove that before a justice is, however, another matter. When a certificate of conviction is tendered as proof of a criminal record it is necessary to establish that the person named in the certificate is the same one as the person before the justice. Identity of names may be some evidence of this, but it is not always sufficient as proof, and in any event it is not uncommon for prostitutes to use different names and false identification from time to time. It is true that under s. 457.3(1)(a) of the Criminal Code, a justice at a show cause hearing may ask the accused on oath about a prior criminal record, but it does not follow that this procedure will be effective in securing the necessary evidence.

The safest way of proving identity in relation to a prior criminal record is by comparison of fingerprints. However, s. 195.1 is a summary conviction offence only. As such, the police have no authority under the Identification of Criminals Act or at common law to take fingerprints. Accordingly, there will not normally be any fingerprints attached to a prior conviction for violation of s. 195.1, and there will be no fingerprints taken from a person who is charged under the section.

These difficulties are compounded in the case of out-of-town prostitutes, since any prior record or relevant information is likely to be kept elsewhere. The unavailability of fingerprints makes it more difficult to keep track of the movement of prostitutes from city to city in Canada, and of trans-border movements involving the United States.

Whether the Calgary police are right or not in their interpretation of the bail provisions of the Criminal Code, it is clear that they feel hampered in a range of law enforcement functions by the unavailability of fingerprint evidence in s. 195.1 matters. The problems are to some extent general ones relating both to the bail provisions and to evidence of identity in summary conviction matters. However, the Calgary Police, like those in Vancouver, advised that these problems are solvable by simply making soliciting a hybrid or dual procedure offence, thereby bringing it within the Identification of Criminals Act. There is no suggestion on the part of the police or the Crown prosecutors of any particular desire actually to proceed with s. 195.1 charges as indictable offences. However, the dual procedure approach might have implications at the point of sentencing.

Sentencing

As we saw in the previous chapter, the typical Calgary case under s.195.1 involves a plea of guilty followed by a fine in the range $100 to $400. No person interviewed was able to suggest any discernible pattern for the actual fines levied. Nor is there strong correlation with prostitute or customer; heterosexual or homosexual; age, status, background or income, to name some of the more obvious variables. Among prostitutes, in the few cases in which a prior record is adduced, the fine does seem to be at the higher end of the scale. However, we were advised that it is not common practice for the police to furnish the Crown prosecutors with formal prior records for s.195.1 offences because of the difficulty felt by the police in making formal proof of identity should that be necessary. Clearly, if stiffer penalties are being sought for recidivists, this is a matter which requires attention. We want to outline here some of the legal restraints under which the police and Crown are operating.

The leading case dealing with proof of fact which the Crown or the defence wishes to have considered in relation to sentence is Gardiner (1982), 68 C.C.C. (2d) 477, in the Supreme Court of Canada. This case is clear authority for the proposition that when the Crown seeks to rely on an aggravating fact in relation to sentence, and the existence of that fact is contested, the Crown must then either abandon that evidence, or prove its existence beyond a reasonable doubt. A prior

record is such an aggravating fact : Protz (1984), 13 C.C.C. (2d) 107, in the Saskatchewan Court of Appeal.[1]

This creates a problem for the Crown in cases where it seems clear that the accused does have a prior record relevant to sentence, but the Crown is not in a position to prove this record *if its existence is contested.* Should the Crown allege the record or not? Many responsible Crown take the position that that it is at least ethically, if not indeed legally, impermissible to allege a fact that it knows that it cannot prove if required. At the other extreme, there is a minority position that there is nothing wrong in the Crown, in effect, taking a gamble that no such challenge will materialize. The middle ground occurs where Crown counsel has solid reasons for believing that a criminal record exists but knows that it will be difficult to formally prove that record. Most prosecutors feel it is permissible to allege the record and withdraw the allegation if it is contested, or, if the record is viewed as important for sentencing, to remand the proceedings until such time as the formal proof can be introduced. Such evidence could be established by the introduction of a certificate of conviction from the court in which the previous convictions had been registered, and/or eyewitness testimony from police involved in the previous cases.

The position in Calgary, and indeed it appears to be the case in all Prairie cities, is either the first or the third of these possibilities, particularly the third. Typically, the prosecutor will have an administrative record of prior convictions, including summary offenses for persons previously convicted in the same jurisdiction. And as more charges are laid in Calgary, this will become an even commoner situation. The administrative record does not constitute formal proof, i.e. a certificate of conviction. And even with certificate evidence, the police would be reluctant to provide such material because of their own feelings about the need for fingerprint evidence. This does not mean that police are unaware of previous convictions. The problem arises most acutely where the convictions have occurred in another jurisdiction (i.e. prostitutes from Vancouver, Winnipeg, etc. who work periodically in Calgary) The police feeling is that where they might want the Crown to seek a stiffer sentence for recidivists, they must be in a position to provide the Crown with unassailable evidence of prior convictions. The normal standard for proving identity is fingerprint evidence, something which police cannot gather in summary matters. In Calgary, given the large scale sting operations, mass fingerprinting of all the accused would potentially tie up the entire police

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[1] However, it is very clear that the Crown is not obliged to make proof of aggravating facts ab initio, but only where their existence is contested; and even where the Crown is obliged to prove a contested fact, the applicable rules of evidence will be somewhat more relaxed than they would be on the trial proper : Gardiner, above.

identification unit, and, given the summary nature of the offence, the latter would be professionally disinclined to cooperate since they would not have the authority to gather such evidence. Consequently, while the Crown and the police might know of prior convictions, its systematic introduction at the point of sentencing is currently viewed by Calgary Police as problematic, particularly in the case of serious recidivists, and particularly where the evidence is being led to justify graver penalties, such as imprisonment. However, as we noted earlier, given the relatively low numbers of cases actually tried, and the very low numbers of recidivists, these concerns have a decidedly theoretical ring.

Perception about the Magnitude of Fines and Other Penalties

There is some sentiment among both the police and the Crown prosecutors that if a fine is indeed an appropriate form of sentence in s.195.1 cases, the range of fines levied in Calgary is too low. This relates to a more general perception that when in 1985 Parliament raised the maximum fine for a summary conviction offence from $500 to $2000, the judiciary in Calgary did not make any significant upward adjustment in the normal range of fines imposed for what might be described as normal everyday offences devoid of particular aggravating factors. It is quite true, as was pointed out by members of both the judiciary and the criminal defence bar, that s.195.1 in its present form is a new offence that was first enacted after the maximum fine for summary conviction offences had been increased, and therefore that there was no pre-existing normal range of fines that could be increased. However, it is also true that the present range is similar to the modest levels which had existed from 1977 to 1979 when charges were laid under the previous version of s.195.1. What is clear is that the range of fines imposed in Calgary is not dramatically different from the range imposed in other major cities in Canada.

In these circumstances, it seems best to view police concerns that the overall level of fines in Calgary is too low to act as an effective deterrent, or as an expression of public disapproval, as concerns relating to sentencing practices in general. There are, however, some more specific considerations. There was a strong feeling at both the police level and among the legal interests canvassed that, in relation to customers charged under s.195.1, the deterrent effect of actual or potential publicity was much stronger than the deterrent effect of any fine. Accordingly, while there was no suggestion that separate offences or penalty scales should be created for customers on the one hand and prostitutes on the other.

In relation to prostitutes convicted under s.195.1, police sentiment seemed inclined to some reform that would at least encourage, if not positively mandate, increased fines for second and subsequent offences. One existing model that was looked on favourably was s.239(1)(a) of the Criminal Code with its scheme of graduated minimum penalties for first, second and subsequent offenders. Concern

was expressed, however, with the requirement of that model that notice of intention to seek the increased penalty be served on the accused as a precondition to invocation of the second and subsequent offender penalties. The police in particular find that requirement to be extremely cumbersome, and suggest that it would likely be even more so if imposed in relation to s.195.1.

All those interviewed who supported some increase in fines levied for convictions under s.195.1, however this be achieved, entered the caveat that, in the case of prostitutes, fines may not be so much a deterrent as a positive stimulus to further prostitution-related activity. For those already involved in prostitution, the easiest way to raise money to pay fines is likely to involve more business. Those interviewed who did not support any increase in fines also made this point.

There has been very little use of probation or of the conditional discharge in the Calgary courts as sentences for those convicted under s.195.1. Only 2 persons sentenced in 1986 and 1987 were given probation in addition to a fine, and only 1 received probation only (see Table 2.7 in the previous chapter). Those few cases where such measures have been used involved either people who cannot in any normal sense be said to be prostitutes but who have nevertheless offered to prostitute themselves for a particular purpose, or younger adults new to the business for whom probation may serve as support for attempting another way of life. An example of the first situation is a young Native adult who wished to return to her home community, and attempted one act of prostitution in an effort to raise the necessary bus fare. In this sense, the police, the Crown prosecutors and the judiciary all seem to be ad idem in viewing probation as primarily a therapeutic or rehabilitative measure.

According to respondents, there has been no use, and there is no apparent enthusiasm, for the use of probation as an essentially deterrent measure for prostitutes apparently accustomed to that business. This has been tried in other cities such as Regina through the imposition of probation conditions prohibiting association with prostitutes, or prohibiting the presence of the prostitute on those streets constituting the normal strolls. In purely practical terms, such conditions are not normally observed by those upon whom they are imposed, and the result is that the offender then becomes a candidate for a jail sentence either for a further offence under s.195.1, or for the offence of failure to comply with a probation order under s.666(1) of the Criminal Code. Police interviewees in particular stated quite firmly that they did not wish to see this type of probation order made in the Calgary courts because it was of no real assistance to them in their primary task of managing prostitution in Calgary.

It follows logically from the negative attitude of the Calgary police and Crown prosecutors towards probation as an essentially deterrent sentence that there has been virtually no use of jail sentences in Calgary for s.195.1 offences. Indeed,

there appears to be only two cases in which a jail sentence has been imposed. In one a male hustler received sixty days. In the other, a female prostitute received ten days. Both appear to have been routine cases. The first in particular was remarkable in that there was a guilty plea, no evidence of any unusual or aggravating circumstances, no request of a jail sentence by the Crown prosecutor, and (it seems) no reasons given for the choice of a jail sentence by the judge. Every interviewee saw this particular case as aberrant. The only circumstances in which a jail term might be desirable, in the view of one police interviewee, involved a case where a prostitute repeatedly offended in such a way as to make it clear that he or she was totally unwilling to respond to the management approach adopted by the police. This view commanded general support among all interviewees.

Overall, the Calgary police and Crown experience suggests no fundamental difficulties or dissatisfactions at any level with the range of sentencing options presently available, or with the actual use of those options by the judiciary, subject only to some feeling that it might be useful to impose or even require the imposition of heavier fines for repeat offenders. At the back of this view is a significant feeling that while the criminal law is a useful, indeed an essential, part of any workable scheme for managing prostitution, it is not the ultimate social weapon that can ever stamp out street prostitution entirely.

Evidence Issues: Entrapment and Abuse of Process

Interviews with members of the criminal defence bar raised different sets of questions, particularly about potential defences that arose from the law per se, and from how it was being implemented in Calgary. Of particular interest was the use of undercover law enforcement techniques. Overwhelmingly in Calgary, prostitutes are charged as a result of interaction with an undercover police officer posing as a possible customer, and customers are charged as a result of interaction with an undercover police officer posing as a prostitute. In either case, there is need for an accurate record of what was said by whom and when--hence the use of body-packs, disguises, etc. by undercover officers. The criminal defence bar showed interest in the possible availability of entrapment as a defence argument in undercover enforcement scenarios. Although all members of the criminal defence bar who were interviewed were in principle more than willing to argue the entrapment defence on appropriate facts, none had in fact come across a case under s.195.1 in which it was felt that there was a sufficient fit between the legal requirements of the defence as articulated by the courts and the version of the facts most favourable to the defence case. The legal position appears to be such that entrapment would only apply if the undercover police in effect made a prostitute or a customer out of someone not otherwise inclined to be involved in prostitution.

While entrapment is commonly described as a "defence" in strict legal characterisation, it is better understood under the broader legal doctrine of "abuse

of process". The significance of this is in relation to the burden of proof. To secure an acquittal on the basis of a defence, the accused has only to ensure that there is sufficient evidence before the court to raise a reasonable doubt in his or her favour. To secure an acquittal on the basis of abuse of process, the onus of proof is on the accused to establish the relevant facts on a balance of probabilities. In light of what the criminal defence bar perceived as the generally favourable attitude of the judiciary towards police undercover operations in prostitution-related matters, there was some feeling that the burden of proof was the final straw which, in the words of one interviewee, "made entrapment a classroom issue for you professors, not a practical tool for those of us who work in the courts".

Overall, not only do the criminal defence bar, the Crown prosecutors and the judiciary report no practical experience with trial evidence and entrapment problems with s.195.1 cases, but also there is nothing in the interviews to suggest that any such problems are likely to arise in the future as long as the police adhere to their present enforcement procedures.

Other Defence Interests

The absence of contested trials on the merits in Calgary has meant that there is no experience with some of the interpretations of s.195.1 that have been advanced by defence counsel elsewhere and, at least temporarily, met with success, especially in Vancouver. Crown prosecutors were well aware of such defence arguments that would attempt to engraft some requirement of impeding the public on to the "communication for the purpose of engaging in prostitution" aspect of s.195.1(1)(c). However, the defeat of such arguments at the appellate level particularly in British Columbia has encouraged a feeling that, even if such defences are advanced in the Calgary courts, they are most unlikely to prosper. This was the overwhelming feeling of both the criminal defence bar and the judiciary. The furthest anyone interviewed would go was to suggest the possibility that such arguments might achieve limited success in the short term before certain trial judges in the lower courts, but would not survive appellate review. Overall, the clear sentiment of the legal interests in Calgary is that, given the constitutional validity of s.195.1, it uses language apt to achieve its apparent purpose--namely to prohibit soliciting by both prostitutes and customers regardless of whether any member of the public is physically impeded thereby.

The only point of interpretation that seemed to raise a flicker of interest in members of the defense bar related to the argument that communication for the purposes of prostitution which takes place inside a moving vehicle is communication which does not occur in a public place. This point turns on the proposition that while s.195.1(2) appears to be intended to include motor vehicles in the definition of "public place", it does so only in respect of a vehicle "located in a public place or in any place open to public view". "Located", it is argued, can only

refer to a vehicle that is stationary, not to one that is moving. This argument has succeeded at the trial level in Vancouver, and could well be advanced in the future in Calgary. As a police interviewee pointed out, it is both difficult to see why parliament might rationally have intended this result and difficult to see why - given the wide definition generally accorded to "communicates" - there would not already have been a prohibited communication by the prostitute or the customer to enable them to be in the car together in the first place. In the result, no suggestion was forthcoming that s.195.1(2) should be amended specifically to eliminate this possible interpretation. Certainly, police practice in Calgary is to treat a moving car on a public street as a "public place".

An imaginative hypothetical situation was propounded by one interviewee from the criminal defence bar that even explicit conversations about the provision of sexual services would not be covered by s.195.1 if they took place in a horse-drawn vehicle, a rickshaw or some similar conveyance. There are rickshaws in Calgary, but there is no evidence that they are in any way associated with the world of prostitution, and it is at best very doubtful that the necessary factual situation will ever arise for the argument that since such conveyances are not "motor vehicles" they cannot be "public places" within s.195.1(2). The point is noted here because it is one that might conceivably be thought worth a moment of legislative time.

Youth Court Perspectives

Interviews were conducted with prosecutors and judges in the Calgary Youth Court to determine how Bill C-49 had been implemented and how it the new law was performing. The Calgary Youth Court has handled a very small number of s.195.1 cases, and none has been contested. The Calgary police have picked up relatively few juveniles in the course of their periodic stings. However, when they become aware of a possible juvenile prostitute on the streets the normal practice is to send out an undercover officer with the specific objective of arresting that juvenile. There are two purposes for this practice. One is the more general law enforcement purpose of seeing if anything useful can be learned about pimps or others who may be involved behind the scenes in juvenile prostitution. The other is the individualised purpose of taking the juvenile off the streets for therapeutic or rehabilitative measures. It does not follow that charges will automatically be laid and processed in such cases, though in some cases they are--to motivate the adolescents to cooperate with social service personnel. Police interviewees in particular were very careful to point out that the incidence of juvenile prostitution in Calgary cannot be measured by the number of cases under s.195.1 going through the Youth Court system, precisely because of the broad social problem management perspective adopted by all relevant agencies.

Youth Court interviewees also stressed that juvenile prostitutes may in theory come in to the Youth Court system under the provincial Child Welfare Act or, as is

the case in practice, under the federal Young Offenders Act. One judicial interviewee in particular expressed a decided preference for treating the juvenile prostitute as a social problem best dealt with under the Child Welfare Act, because the due process guarantees imported from the adult criminal law to the Young Offenders Act made it difficult at times to deal humanely and effectively with the juvenile in question. However, it is apparent that this view flows from general concerns about the Young Offenders Act and its focus, rather than from any particular problems connected with s.195.1 and the processing of charges in the Youth Court, particularly as there is no recent experience with using the Child Welfare Act in such cases.

The fact that juvenile prostitutes who come to the attention of the authorities do not necessarily get into the Youth Court system appears to have contributed to an interesting pattern of dispositions in those few cases which have come in under the Young Offenders Act. The apparent assumption is that those cases which come in as criminal matters have in some way been rationally selected, and that the juvenile in question is either 'hardened', 'recalcitrant', or needs the deterrent as much as the rehabilitative aspect of the Court's powers. There appears to be some truth to this assumption. The practical result is that the most prevalent penalty is the fine, and a wider use of probation than found in the adult court. No Youth Court interviewee suggested any particular difficulty in practice with s.195.1 on matters of procedure, evidence or substantive interpretation such as to require legislative attention.

Legal Aid

There is no evidence that the enactment of s.195.1 and its enforcement in Calgary has generated any extra financial burden for the Legal Aid scheme. Very few applications have been received relating to s.195.1 matters, and it is the policy of Alberta Legal Aid that aid will not normally be granted for a summary conviction matter unless there is an appreciable possibility that if convicted the applicant will receive a jail sentence or suffer some extremely serious collateral consequence such as loss of livelihood. The first alternative does not arise given the sentencing practices of the Calgary courts, and the second is thought only applicable to customers and not to prostitutes. In the ordinary course, no defence counsel would advise an application for legal aid by any person facing a charge under s.195.1 alone.

Legal Representation

It has not been possible to obtain accurate statistics of the number of persons charged under s.195.1 who have had counsel. Given that the majority of those charged have been prostitutes rather than customers, and that with the exception of those cases involving challenges to the constitutional validity of s.195.1, virtually all cases heard in Calgary have involved guilty pleas, it is not surprising that the

impression of those interviewed is that less than half of those charged have been legally represented. By contrast, there has been greater use of counsel, particularly private counsel, by accused customers.

No particular members of the criminal defence bar can be identified as having taken a particularly large segment of those cases in which legal representation has been obtained by the accused. There used to be one defence counsel, who has now left the jurisdiction, who had a fairly substantial public profile and reputation in prostitution-related cases, especially those with a constitutional or civil liberties aspect. However, there is no obvious successor. This means that there is no counsel who would claim particular expertise in s.195.1 matters, or of whom it could be said that that he or she was Calgary's equivalent of Mr. Serka of Vancouver. While all counsel interviewed had some experience with clients charged under s.195.1, and all showed an awareness of the relevant jurisprudence, the practical reality was that they were normally retained either to speak to sentence or, in the case of customers, to guide them through the system with minimum distress. In one case, for example, this involved detaching the client from the court date set for the appearance of all the customers charged after one undercover operation, with its attendant media attention, and arranging a routine guilty plea at an earlier date in a courtroom in which media representatives were not in fact present before a judge known more for his non-moralistic, routine disposition of such cases than for his leniency.

On the Crown prosecutor's side, there was an administrative arrangement during the first period of active processing of cases--February 1986 through October 1986--that assigned virtually all s.195.1 cases to one particular prosecutor. This arrangement was not continued for the second period of active processing of cases--July 1987 through January 1988--largely, it seems, because the volume of cases in the late summer and fall of 1987 was felt to be too great for the arrangement to work efficiently.

The end result is that there are few lawyers in Calgary on either the defence or the Crown sides who have developed particular expertise in s.195.1 matters.

Summary

There is no apparent dissatisfaction with the basic structure of s.195.1 as it now exists in the law enforcement and legal communities in Calgary. No problems have been identified that seriously concern the judiciary, the Crown prosecutors or the criminal defence bar. There has been no adverse impact on Legal Aid. From a strictly legal perspective there is little activity and fewer problems. True, there are those in the legal community who would advocate the total removal of soliciting from the Criminal Code, leaving the regulation of prostitution to provincial and municipal initiatives as a matter of public health, land use planning, social welfare

or public nuisance. There is general agreement, however, that if the matter is indeed one for the Criminal Code, s.195.1 is working satisfactorily in practice, or at least is not working unsatisfactorily as yet.

The police in particular would like to see s.195.1 made a hybrid or dual procedure offence, primarily so that fingerprinting of those charged would be permissible both for evidential reasons connected with bail and sentencing as well as for more general law enforcement purposes. There is opposition to such a change, particularly from the criminal defence bar, on broad civil libertarian grounds that are certainly appreciable but have relatively little to do with the control of prostitution and s.195.1 itself. The police would also favour some change whereby repeat offenders would be liable to heavier penalties, but it is quite possible that this could be accomplished by judicial practice coupled with the easier proof of prior records that would flow from making s.195.1 a hybrid or dual procedure offence permitting fingerprinting. In the alternative, a more formal legislative scheme akin to s.239(1)(a) of the Criminal Code might be appropriate, but there is concern about the administrative if not also the legal complications that might flow from any requirement that the accused by served with notice of intention to seek a greater penalty by virtue of the prior record. Outside of the police service, there was little support for this more formal alternative, and it was by no means the first choice even within the service. There was little outright opposition to the idea that some mechanism should be found that would at least make it easier to ensure that repeat offenders could, but would not necessarily, face heavier sentences.

Overall, it is probably a fair summary of the opinions of those interviewed that on balance if we are to have soliciting in the Criminal Code, it is preferable to keep the devil as we know him with a few possible adjustments rather than try to redesign him entirely. Although some peculiar things theoretically could happen under the existing law, they have not happened in Calgary and there is very little practical likelihood that they will in the future.

IV. A NATIONAL OVERVIEW OF THE LAW AND PRACTICE IN PROSECUTIONS UNDER THE CRIMINAL CODE OF CANADA, S. 195.1

Introduction

In the previous chapter we outlined the perspectives of key actors in the legal community in Calgary. The purpose of this chapter is to review the criminal law relating to the control of street soliciting by prostitutes and their customers as it has been set out, for the most part, in reported cases in the various jurisdictions across Canada. It is intended primarily for persons requiring a working knowledge of the legal provisions and their interpretation by the courts as background to an understanding of the dynamics of prostitution and its legal control in major Canadian cities.

First, there is a brief review of the Criminal Code provisions with respect to prostitution in general, and soliciting, as they stood before 1972 and between 1972 and 1985. This will provide a context for understanding the legal issues that have arisen under the present Criminal Code s. 195.1 enacted in 1985 with Bill C-49. Second, there is an analysis of some of the structural aspects of the legal system that have led to uncertainty in the interpretation and application of the law from 1985 to the present. Third, there is a short section dealing with police enforcement of s. 195.1 prior to its interpretation by the courts as s. 195.1 of the Criminal Code. This is followed by a legal analysis of the section, divided into four parts: its validity under the Charter of Rights and Freedoms, its interpretation, evidentiary problems, and the sentencing of those convicted. Finally, there is an assessment of alternative legal strategies which have been employed by various police forces to combat prostitution.

Geographically, the main focus is on the provinces of Nova Scotia, Quebec, Ontario, Alberta, and British Columbia, since it is the cities of Halifax, Montreal, Toronto, Calgary and Vancouver--cities in which the problems of prostitution were thought to be most acute--that were selected by the Department of Justice for the review of the performance of the existing law and its operation from 1985 which was called for as part of Bill C-49.

The Legislative History

Prior to July 15,1972, the major Criminal Code provision on prostitution, and particularly on soliciting, was s.175(1)(c), which provided:

> Everyone commits vagrancy who...
> (c) being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself.

Although by no means unsatisfactory from the police perspective, this section attracted adverse criticism for three major reasons. First, it effectively made the mere fact of being a prostitute in a public place a crime, even though prostitution itself was not. Second, it did not address the possible criminality of the customer as opposed to that of the prostitute. Third, it explicitly dealt only with female prostitutes.[1]

The Criminal Law Amendment Act, S.C. 1972, c.13, s.15, repealed the old s.175(1)(c), effective July 15,1972, and enacted in its place the first version of the Criminal Code: s. 195.1:

> Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.

This new provision appeared to give the police a workable law enforcement tool that met the major criticisms of the old s.175(1)(c). Criminality was to be a function of conduct ("soliciting") rather than of status (being a prostitute), and soliciting was specifically required to be "for the purpose of prostitution". Furthermore, the new section appeared to encompass both prostitutes and customers, and males and females equally.

As the jurisprudence developed, a number of problems appeared. In Hutt (1978) 2 S.C.R. 476, the Supreme Court of Canada gave a relatively narrow meaning to "solicit" by holding that it required conduct of a pressing or persistent nature. Furthermore, in Whitter; Galjot (1981) 1 S.C.R. 606, the Court ruled that the pressing or persistent conduct must be directed toward a single potential customer, and could not consist of an accumulation of advances toward different potential customers. Other difficulties concerned the definition of "public place", and in particular, whether or not a car (including an undercover police car) could be covered by the legislation. This particular problem was never authoritatively resolved by the courts, although statements by Spence J. in the Hutt judgment were often treated as practically determinative of the matter. Though Hutt deals specifically with the criterion of pressing and persistent conduct, in his judgment Spence J. also dealt with the issue of whether a car was a public place. He found that it was, and his opinion was later reflected in the wording of s. 195.1(2). Finally, a clear conflict arose between the British Columbia and the Ontario Courts of Appeal

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[1] A detailed review of the workings of this provision and its precursors can be found in Prostitution in Canada, Ottawa: Advisory Council on the Status of Women, 1984.

as to whether the original version of s. 195.1 allowed customers to be charged as well as prostitutes.[1]

Whether or not a combination of these decisions and the problems which they posed for law enforcement agencies did in fact so emasculate s. 195.1 as to render it functionally useless as a legal vehicle for controlling soliciting by prostitutes, it is quite clear that policy decisions were made in many police forces to stop using the section. In some jurisdictions, creative attempts were made to use other existing federal and provincial laws as a substitute. On the whole, such attempts met with a frosty judicial response--either by interpreting the laws in question as simply not extending to cover the conduct involved, or by imposing requirements of proof on the prosecution that were frequently at least as difficult for the police to meet as they had found in Hutt . For example, in the case of charges of counselling gross indecency, the act described in conversation must be capable of being grossly indecent, and it must be established that there is intention to commit it in public, and in the plain light of day. In Winnipeg in 1986 the Court of Appeal found that the combination charge was lawful after lower courts had thrown it out in at least two cases, including R. v. Burnette (unreported).[2] At the other end of the continuum was the use in Alberta of the Highway Traffic Act to charge a prostitute whose conduct distracted vehicular drivers to such an extent that the flow of vehicular traffic was allegedly impeded. In R. v. Jones (1983), 4 W.W. R. 19 (Alta. S.C. App. D.), the accused was acquitted of "stunting" in a case which arose from a minor traffic accident in which a driver became distracted by a street prostitute. Attempts to replace the federal soliciting law, which was unenforceable after Hutt, with the provincial Act, proved futile.

Some cities attempted to fill the perceived gap in the law enforcement arsenal by enacting municipal by-laws under provincial powers granted to control nuisances and the use of the streets. The constitutional validity of such by-laws was always questionable, since the municipalities are creatures of the provinces, and under the Constitution Act 1867, s. 91(27), only the federal government has the authority to make criminal law. Accordingly, if these by-laws were characterized by the courts as in substance dealing with a problem of crime, they would be invalid. Finally, in Westendorp (1983), 2 C.C.C.(3d) 330, the Supreme Court of Canada did indeed authoritatively characterize the City of Calgary by-law as an improper encroachment on the exclusive federal domain of the criminal law. Since substantially the same approach had been taken by other cities in drafting their by-

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[1] Di Paola (1978), 4 C.R.(3d) 121 (Ont.C.A.) would so interpret s. 195.1, whereas Dudak (1978), 41 C.C.C.(2d) 31 (B.C.C.A.) would not.

[2] Conviction by Mr. Justice Hanssen in Court of Queen's Bench--counselling being an indictable offense--was recorded in the Winnipeg Sun, April 27, 1986 and the Winnipeg Free Press, April 23, 1986. Appeal of this case, together with a juvenile case, to the Manitoba Court of Appeal was reported in the Winnipeg Free Press, June 10, 1986. The Appeal Court upheld the conviction.

laws, the Westendorp decision effectively marked the end of a brief period of renewed enforcement activity by the police in the cities in question. Although there are ongoing attempts at the municipal level to draft by-laws that will withstand this constitutional attack, the problems of relative provincial and federal authority to control prostitution are now part of the larger picture.

Law enforcement agencies and concerned citizens groups became increasingly vocal in their exertion of political pressure for a new and broader version of Criminal Code s. 195.1 Although not necessarily so articulated, the pleas often appeared to be seeking to return to a legislative structure not unlike the old Criminal Code s. 175(1)(c) that had been repealed in 1972. This plea did not find great favour with the Special Committee on Pornography and Prostitution (the Fraser Committee), which had been set up by the federal Minister of Justice and reported in 1985.

The Minister of Justice, the Honourable John Crosbie, clearly recognized the need for quick legislative action in the aftermath of the report of the Fraser Committee. The essentially limited approach to the problem of street soliciting proposed by the Committee did not find favour, but neither did a return to the old 'vagrancy' model found in the repealed s. 175(1)(c). The result was a new version of Criminal Code s. 195.1,[1] which came into force on December 20,1985:

> 195.1 (1) Every person who in a public place or in any place open to public view
> (a) stops or attempts to stop any vehicle
> (b) impedes the free flow of pedestrian or vehicular traffic on ingress to or egress from premises adjacent to that place, or
> (c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person for the purpose of engaging in prostitution or of obtaining the sexual services of a prostitute is guilty of an offence punishable on summary conviction.
> (2) In this section, "public place" includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

In introducing this new legislation in the House of Commons, September 9, 1985, the Hon. Mr. Crosbie in an oft-quoted passage explicitly recognized that this was not an attempt to deal generally with all the legal issues connected with prostitution. It was a limited attempt to address the nuisance created by street soliciting that sought to balance the concerns of law enforcement agencies, citizens groups, women's groups and civil libertarians.

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1 enacted by S.C. 1985 C.50

From the law enforcement perspective, one key to the 1985 legislation was the elimination of the word "solicit" and its derivatives. Instead, the focus was on conduct interfering with vehicular or pedestrian traffic, or on communication for the purposes of prostitution, thus apparently freeing the law from the restrictive effects of the decision of the Supreme Court of Canada in Hutt. The new law also applied equally to males and females, and to prostitutes and customers. Furthermore, s. 195.1(2) appeared to resolve the debate about whether a motor vehicle located in a public place or in a place open to public view was itself a "public place". Clearly, a period of renewed law enforcement activity was to be expected.

The Legal System at Work

It is trite that even the most carefully drafted law will produce challenges and novel interpretations from those adversely affected. Furthermore, the fundamental validity of any new law is likely to be questioned under the Charter of Rights and Freedoms. It takes time before these questions are even raised in a courtroom. Accordingly, there is always a period in which the police, acting on legal advice, apply and enforce the law on the basis of a particular vision of its scope and validity. Even though the law in question is a federal law of national application, it does not follow that initial police enforcement will be uniform across the country. Accordingly, the legal issues surrounding the law will reach the courts at different times in different provinces, or even in different cities in the same province. The resulting judicial decisions, made at the trial level, may well differ significantly, as may law enforcement response to those decisions. It has taken some eighteen months from the coming into force of the present version of Criminal Code s. 195.1 for cases to reach the appellate level within the provinces and those decisions are not uniform across the country in either their reasoning or result.

As a practical matter, the Supreme Court of Canada will have to deal with at least the fundamental question of the validity of Criminal Code s. 195.1 under the Charter of Rights and Freedoms. At least three such cases are now before the Supreme Court of Canada. In Skinner (1987), 35 C.C.C.(3d) 203 (N.S.C.A.), the Nova Scotia Court of Appeal struck down the section on May 20, 1987, as violative of the Charter of Rights and Freedoms. The Supreme Court of Canada granted the Crown leave to appeal that decision on October 2, 1987. In Jahelka; Stagnitta (1987), 36 C.C.C.(3d) 105 (Alta. C.A.), the Alberta Court of Appeal upheld the validity of s. 195.1 on July 17, 1987. The accused filed their notice of appeal to the Supreme Court of Canada on January 25, 1988, and on February 1, 1988, they were granted an extension of time to serve that notice of appeal. The conviction of Cunningham which was the subject of the Reference heard before the Manitoba Court of Appeal will be heard in the Supreme Court simultaneously with the Nova Scotia and Alberta cases. The practical result is that it is most unlikely that the

Supreme Court of Canada will even hear argument in these cases until the Fall of 1988, with judgment appearing at the earliest over Christmas and New Year 1988-89. Even this schedule would only see a resolution of the fundamental question of the constitutional validity of s. 195.1. Assuming its validity, specific points of interpretation may take a great deal longer before they are authoritatively resolved.

According to this schedule, the legal system will be moving at just about top speed to produce authoritative decisions binding across the country within three years of the enactment of the law. As matters now stand, it is necessary to look within each province to see what judicial decisions if any will take precedence within that jurisdiction. Once the Court of Appeal of a province has spoken, the decision is binding on all courts within that province, but has no binding force outside of it. Thus, as a result of the Skinner decision, s. 195.1 has been unambiguously invalid in Nova Scotia since May 20, 1987, and cannot be used in that province. On the other hand, as a result of the Jahelka; Stagnitta decision, the section has been unambiguously valid in Alberta since July 17, 1987, and can be enforced there.

Before the Court of Appeal of a province has provided a judgment, no other judge in the province is legally obliged to follow or accept a decision of a Provincial Court judge. All Provincial Court judges are bound to follow the decision of a court to which appeals lie initially from the Provincial Court. But no judge of a court to which appeals lie initially from the Provincial Court is bound to follow a decision of a judge of the same court. Where there are conflicting decisions by judges of a court to which appeals lie initially from the Provincial Court, the normal view is that a Provincial Court judge is not strictly bound to follow one decision rather than another, and is therefore free to choose.

In practice, the sort of temporary judicial anarchy which this approach to precedent can cause is relatively unlikely to occur, because judges are in the habit of respecting and following considered judgments of their colleagues even if they do not necessarily agree with them. Nevertheless, there are examples of judicial disagreement, not only between courts in different jurisdictions, but also within different provincial courts in the same jurisdiction in respect of aspects of s. 195.1. For example, there are conflicting decisions in Ontario as to whether the section violates the protection of freedom of expression provided for in the Charter of Rights and Freedoms. In Bailey (1986), 9 C.R.D. 525.20-02, Bordeleau P.C.J. upheld it on August 14, 1986, in Ottawa; Bailey is being appealed in the Ontario Court of Appeal in April, 1988. In Kazelman et al. (1987), 10 C.R.D. 525.100-08, Harris P.C.J. struck down the section on April 21, 1987, in Toronto, referring among other cases to the decision in Smith, August 5, 1986, in which Bernhard P.C.J. had struck it down. The same woman was charged again, and in Smith on June 19, 1987, Decceco P.C.J. also struck it down . Then in Smith on July 10, 1987,

Bernhard P.C.J. reversed her previous position, upheld the section and convicted Smith on her third distinct charge. No one, least of all Jennifer Smith, could predict the state of Ontario law respecting the validity of s. 195.1!

So far as the police are concerned, it seems clear that they can no longer continue to use a law that has been struck down by the Court of Appeal of the province in which they operate. Any step sought to be justified by reference to a "law" that no longer exists in law must of necessity be illegal. However, in legal theory, the police are under no obligation to refrain from enforcing a law that has been struck down by a Provincial Court judge. As a practical matter, they may be wise to refrain from bringing charges before the courts until the adverse decision is appealed, but they are not required to do so by virtue of the adverse decision itself. Such decisions, however, are not always left to the police. Either directly or acting through Crown Counsel responsible to him, the Attorney-General of a province may issue advice or actual directives to the police on how they shall proceed in such cases.

The Attorneys General of different provinces may well choose to respond differently in such cases. For example, when confronted with an initial crop of Provincial Court decisions striking down significant parts of s. 195.1, the Attorney General of British Columbia took the position that police enforcement of the section should continue pending appeal by the Crown of the adverse decisions. But the Attorney General of Alberta effectively directed police in that province not to rely at all on s. 195.1 after it had been struck down as violative of the Charter of Rights and Freedoms by concurrent Provincial Court decisions in Edmonton and Calgary on September 15, 1986. However, since trial decisions are not binding as a matter of law on other courts, the position in Alberta was somewhat confused for about six weeks. On October 28, 1986, the Attorney-General directed police forces not to lay further charges until the law was tested in the court of appeal. Since the Alberta Court of Appeal restored the constitutional validity of s. 195.1 in late July of 1987, it is once again being enforced and relied upon by police in the province.

Finally, it must be noted that other lawyers and judges will not necessarily be aware for some time of a judicial decision. Formal reporting of decisions is painfully slow, with a time-lag of several months or even a year not at all uncommon. Even the noting of decisions in so-called "advance services" may well involve a delay of at least several weeks. However, in most provinces, Crown Counsel and the judiciary have a reasonably effective network for keeping up to date informally, as do the police. Experienced defence counsel will also be fully abreast of recent developments. While it is true that a judicial decision has in theory full precedential value from the date of its pronouncement, and informal networking will often ensure its reasonable availability in typescript at an early date, there is no guarantee that in smaller communities--or in cases involving

inexperienced counsel--a decision will not be handed down in ignorance of other relevant decisions, whether binding in the strict sense or merely persuasive.

Initial Police Enforcement of s. 195.1 and the Timetable of Decided Cases

The current version of s. 195.1 came into force on December 20, 1985. We have described above the diversity of judicial interpretations of its constitutional validity. There is also evidence of substantial diversity in the manner of police implementation both from a gender and from a regional perspective--variations which have affected the timing under which challenges have emerged in various jurisdictions. A Canadian Press survey in early February 1986 reported that as of January 31, 1986, a total of 370 charges had been laid across Canada. Of these, 250 charges were against prostitutes and 120 against customers. None of these cases had yet gone to a contested trial, although a handful had been disposed of by guilty pleas. There was no evidence of how the courts would approach either the validity or the interpretation of s. 195.1 at this stage. But provincial diversity was already evident. Of the 250 charges against alleged prostitutes, no less than 225 were laid in just three cities: Toronto, Winnipeg and Vancouver. Of the 120 charges against alleged customers, no less than 97 were laid in those same three cities. No charges at all had been laid in Calgary, and clearly very few indeed had been laid in such major cities as Halifax and Montreal.

There is no suggestion at all that this immediate lack of police enforcement in cities like Halifax, Montreal and Calgary is reflective of police or legal doubts about the validity or interpretation of the law. Further, it would fly in the face of reality to suggest that the dimensions of street prostitution in those cities was so insignificant that the new law was not really necessary for them. The probable explanations are to be found in police manpower allocation decisions and in police enforcement strategies. For example, in Calgary there were statements from the police intended to put both prostitutes and customers on notice that the law would in due course be enforced by the laying of charges, but that for an initial period such manpower as could be allocated to enforcement would concentrate on warning those who appeared to be breaching s. 195.1, and on developing more co-operative enforcement relations with the prostitutes.

Accordingly, in all cities it seems that the new s. 195.1 was viewed by the police as a satisfactory law enforcement tool. The statistical differences are reflective of different approaches to law enforcement. One practical result is that in some provinces and cities the court cases that were to expose the legal difficulties inherent in the new section took a lot longer to mature. In some respects, this probably worked to the advantage of efficient practical law enforcement in cities like Calgary.

Nevertheless, it was clear from general legal and political reaction to the new section that there were two very different types of legal argument which were capable of (a) either invalidating the section as violative of explicit protections of expression, free association and other actions guaranteed under the Charter of Rights and Freedoms, or (b) of producing interpretations of the new law with such strict evidentiary requirements as to become as onerous from a police perspective as those which made the old s.195.1 virtually unenforceable. In the normal course, however, it would be March, 1986 at the earliest before any judicial decisions would emerge in contested cases. What has happened in fact as judicial decisions came on stream is that the law has for a period been in a state of considerable uncertainty as different judges have quite properly responded as best they could to the arguments put before them. The saga of Jennifer Smith, referred to above, is a rather dramatic illustration of this uncertainty. The response in different provinces and, indeed, in different cities within a province, has of course differed. As suggested above, we now have a situation in which both the fundamental constitutional validity of s. 195.1, and its interpretation if valid, must be dealt with by the Supreme Court of Canada in addition to the review of the operation of s. 195.1 that is required by the passage of Bill C-49.

The Charter of Rights and Freedoms

The legal community has recognized from the very beginning that s. 195.1 is at least potentially violative in whole or in part of the Charter of Rights and Freedoms. There are two distinct legal questions involved here. First: what right or freedom guaranteed by the Charter does the section violate in whole or in part? Second: if the section does indeed violate the Charter in whole or in part, can it nevertheless be upheld as a "reasonable limit" that is "demonstrably justified in a free and democratic society" under s.1 of the Charter.

There are several different possible arguments for striking down s. 195.1, including arguments based on the Charter's "freedom of expression" s.2(b), "freedom of association" s.2(d), various aspects of the "right to liberty" and the "principles of fundamental justice" s.7, and "equality rights" s.15 . Since 195.1 explicitly proscribes certain communications in public, and appears designed to prevent persons from associating in public, the expression and association issues are self evident. The issue of liberty has been raised by persons who argue that the law prevents them from engaging in a lawful occupation, or from engaging in financial transactions that are permitted by law. Equality rights are raised by focusing attention on female sellers to the exclusion of male customers, and "fundamental justice," a sort of constitutional catch-all, can take on a variety of constructions. All these arguments have found favour or disfavour with different judges in different cases at different times. In each instance, something has turned on the precise issues

that counsel have chosen to address, even at the appellate level. Furthermore, some courts that have upheld s. 195.1 have done so by finding that it is not violative of any right or freedom guaranteed by the Charter; others have found a violation, but have upheld the section by relying on s.1 of the Charter.

It is not appropriate to review the legal theory of every one of these arguments in any depth (see the final section of this chapter), since nothing relevant to the actual enforcement of s. 195.1 to date appears to have turned on the specifics of why the section is or is not upheld in a particular case. It may, however, be worth noting that in some decisions upholding validity, the courts have apparently taken the position that the section is potentially violative of a right or freedom guaranteed by the Charter if it is enforced in practice to the outer limits of its potential scope. Thus, the Alberta Court of Appeal in Jahelka; Stagnitta (1987), 36 C.C.C.(3d) 105, took the position that on the actual facts before them, and on related reasonable case scenarios, it is appropriate to uphold s. 195.1 by recourse to s.1 of the Charter even though it is possible to imagine facts in which the use of s. 195.1 would be violative of "freedom of expression" as embodied in s.2(b) of the Charter. The Court's position was that it would prefer to declare s. 195.1 unusable in respect of those particular fact patterns if and when they actually arise, rather than to invalidate the entire section on the basis of a hypothetical 'worst case'. The legal validity of this approach is presumably one of the constitutional issues that the Supreme Court of Canada will have to grapple with when it finally hears argument in the Jahelka; Stagnitta case. For the moment, such an approach provides a warning to law enforcement agencies that some caution may be appropriate in the actual enforcement of s. 195.1.

We will now try to give some indication of the various rulings made in the provinces so that time frames can be established as an aid to interpreting enforcement patterns. It must be emphasized that for structural reasons it is almost impossible to guarantee completeness in this area. Many of the decisions involved emanate from the Provincial Court or its equivalent. They are not formally reported. It is often as much a matter of luck as of diligence in bringing them to hand. Appellate decisions are quite recent in many cases, and it is not easy to be certain that the very latest unreported decisions have all been accessed. The following overview sketches the Charter challenges which have been advanced in various provincial jurisdictions.

(a) British Columbia

The initial decisions striking down parts of s. 195.1 were McLean, March 3, 1986, Libby P.C.J.; and Tremayne, April 10, 1986, Lemiski P.C.J. Both decisions were reversed by McKay J. on May 7,1986, reported (1986), 28 C.C.C.(3d) 176, and are now before the Court of Appeal. Accordingly, there was a very short

period during which Provincial Court decisions of invalidity could properly be made.

More recently, on a separate issue, the apparent police practice of automatic arrest of prostitutes and customers when charged has been challenged successfully as violative of s. 9 of the Charter, which proscribes arbitrary arrest or detention.[1] To the extent that these decisions stand, they do not affect the validity of s. 195.1 per se, but they certainly reduce its effectiveness from the police perspective as an enforcement tool--in particular to actually move prostitutes physically off the streets. In effect, these decisions require that the police apply the normal arrest and bail provisions to the facts of each situation rather than adopt a blanket policy.

(b) Alberta

The initial decisions striking down s. 195.1 were handed down on September 25, 1986: Jahelka; Stagnitta, Chisholm P.C.J., Edmonton; Bear, Wightman and Gordon (1986), 47 Alta.L.R. (2d) 255 Cioni P.C.J., Calgary. They were reversed, and the validity of the law was upheld by the Court of Appeal on July, 17, 1987: Jahelka; Stagnitta (1987), 36 C.C.C.(3d) 105, now before the Supreme Court of Canada. The Attorney General of Alberta in effect directed a freeze on police enforcement on October 28, 1986, pending the Court of Appeal's decision. This freeze was lifted on July 17, 1987, and the law is now once again being actively enforced.

(c) Saskatchewan

On July 22, 1987, Provincial Court Judge K.E. Bellerose P.C.J. found that three constitutional challenges to s. 195.1 of the Criminal Code were without merit. Counsel for Sandra Acoose argued that the soliciting section challenged the Charter right to association, right to liberty, and freedom of expression. The court found that Acoose, in spite of her business, was not engaged in public association, but private conference, that her rights to liberty were not infringed by s. 195.1 since constitutional protection does not protect how livelihoods are conducted (ie. via public solicitation), and finally that the right of expression recognized in the Nova Scotia Courts in the Skinner case was based on an unsound interpretation of an earlier precedent--Dolphin Delivery v Retail Workers. This latter case involved secondary picketting during an illegal strike, and, in view of Judge Bellerose, contained both an element of expression and an element of economic pressure. Judge Bellerose disagreed with the opinion of the Nova Scotia Court of Appeal and recommended that illegal conduct, which is basically economically motivated, but which also contains an element of expression is not entitled to constitutional

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[1] (See Pithart, Leggatt C.C.J., April 6, 1987, followed in Kelly and in Ho, McCarthy P.C.J. and Maughan P.C.J. respectively, April 10, 1987.)

protection, since the communication is incidental to the illegal conduct and, consequently, not deserving of Charter protection. He found that the Skinner case was based on a precedent which would ultimately fail. The accused was convicted, as were an unspecified number of other street prostitutes whose cases were held until the judgment in R. v. Acoose (unreported, Provincial Court, Regina, July 22, 1987).

In a second unreported Saskatchewan case, R. v. Cheeseman, Judge Bellerose upheld s. 195.1 against challenges based on freedom of expression which was construed by defense counsel to permit freedom of communication.[1] Finally, in another unreported case in Saskatoon, her Honour Judge Wedge P.C.J. upheld section 195.1 against a wide assortment of charter challenges. In addition to the usual freedom of expression and freedom of assembly defenses, counsel argued that the soliciting law discriminated contrary to s. 15 by limiting sexual access of singles (to prostitutes) in a fashion not experienced by married couples.[2] In Saskatchewan there have been no cases in which s. 195.1 has been declared invalid.

(d) Manitoba

S. 195.1 was struck down by Kopstein P.C.J. in extensive reasons dated November 3, 1986, and reported as Cunningham (1987), 31 C.C.C.(3d) 223. Rather than appeal this decision, the Attorney General of Manitoba arranged for a comprehensive Reference to the Court of Appeal dealing *inter alia* with the validity of s. 195.1(1)(c). The Court of Appeal gave its reasons on this reference on 23 September 1987, upholding the validity of the law in Reference re Criminal Code Section 193 and 195.1(1)(c), 1987 6 W.W.R. 289.

Accordingly, for approximately eleven months there was a detailed Provincial Court decision against the validity of the law. During this period, the decision of Kopstein P.C.J. was followed directly by some of his judicial colleagues, but not by all. Even those who chose not to follow him directly, however, often recognized the constitutional difficulties and granted absolute discharges to those whom it was appropriate to convict under s. 195.1.

Given this situation, the Winnipeg City Police and the Attorney-General's Department apparently decided that it would be appropriate to continue to enforce the law as far as possible, but to rely on alternative charging strategies rather than continuing to employ s. 195.1. One chosen route was to lay the relatively unusual

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1 Reported in the Regina Leader Post, June 21, 1986.

2 Because of age, the accused juvenile was not identified. Reported in the Saskatoon Star Phoenix, Feb. 5, 1987.

charge of counselling the commission of an act of gross indecency to combat street soliciting. This involved a combination of Criminal Code sections 422 and 157. In fact, this practice was already in use as early as 1985. It did not require that the act of indecency actually be committed, but merely that its commission be counselled by the accused. This charging strategy would not necessarily extend to all the sexual services that a prostitute might provide for a customer, given the limitations on the concept of "gross indecency" imposed by the jurisprudence. Indeed, the ambiguities of that phrase and the conflicting jurisprudence made this an interesting if controversial charging strategy. This charging strategy, however, was not developed specifically in response to doubts about s. 195.1. Indeed, an item in the Winnipeg Free Press on June 10, 1986, indicated that prior to the decision of Kopstein P.C.J. in Cunningham, the Manitoba Court of Appeal was prepared to uphold such a charge as valid in principle. And no fundamental doubts were expressed in Richard (1986), 30 C.C.C. (3d) 127 (Man. C.A.), albeit that case did not involve prostitution.

This alternative charging option is no longer available given the repeal of s. 157 of the Criminal Code by Bill C-15, enacted June 30, 1987, and proclaimed in January, 1988. However, it was an option during the period prior to the upholding of s. 195.1 by the Manitoba Court of Appeal, and, for the first six months in 1987, was in fact the most frequent charge laid against prostitutes.[1]

(e) Ontario

As has been indicated above, there have been several conflicting Provincial Court decisions respecting the validity of s. 195.1. The earliest decision against its validity that has been found is Smith, August 5, 1986, decided in Toronto by Bernhard P.C.J. So far as can be ascertained, no discernable pattern of decisions has emerged in any one city. Indeed, Toronto has had the rather unusual experience of a Provincial Court judge changing her own mind on the question, since in Smith on July 10, 1987, Bernhard P.C.J. upheld the section based on her reading of the intervening cases. Appellate decisions are pending, but to date none appears to have come down.

(f) Quebec

The validity of s. 195.1 has been upheld in detailed reasons in Cazes, September 30, 1987, Cour Municipale de Montreal, Masse J. An appeal is believed to be pending. There is, therefore, no decision invalidating the section. There are at least two decisions in the Cour Superieure dealing with s. 195.1 charges, but in

[1] Fifty-seven out of the seventy-seven prostitution-related charges laid by the Winnipeg Vice Unit in the first seven months of 1987 were for counselling gross indecency. Virtually all the subsequent 1987 charges were for soliciting.

neither case was validity under the Charter of Rights and Freedoms an issue.[1] Overall, the clear impression is that the validity of the section has not been a significant issue in Quebec.

(g) Nova Scotia

S. 195.1 was struck down by the Court of Appeal in Skinner (1987), 35 C.C.C. (3d) 203, dated May 20, 1987. The effect is that since then, police forces in Nova Scotia have not been able to use the section at all. As has already been indicated, since January 31, 1986, virtually no charges had been laid in Nova Scotia under s. 195.1, and newspaper reports suggest that there was no great use made of that provision in the period afterwards to 20 May 1987.

Interpretation of s. 195.1

In addition to Charter challenges, a second area of defence argumentation arises from the actus reus of s. 195.1. Particularly in Vancouver, B.C., a number of relatively novel interpretations of s. 195.1 have found favour with the trial courts. For a time at least, some of these arguments appear to have found sufficient favour to affect police enforcement and charging practices. Examples of these issues are to be found in all provinces, but this portion of the paper will use British Columbia for illustrative purposes. Though street prostitution is an important concern in many Canadian cities, Vancouver cases are particularly instructive since (a) they reflect an extremely broad range of evidentiary issues, (b) they are more accessible both in media accounts and in the reported cases, largely as a result of a more activist defense bar,[2] and (c) there has historically been more appeal activity arising from Vancouver than other urban centers. In this discussion of evidentiary issues, it should be noted that virtually all the jurisprudence revolves around s. 195.1(1)(c). There is little evidence of charges being laid, let alone of problems arising, under the other parts of s. 195.1(1).

(a) Communication

Charges based on s. 195.1(1)(c) necessarily involve the definition of "communication", which is not defined by any relevant legislation and is therefore left to judicial decision. Questions have arisen as to whether mere eye contact, even of a blatant nature, can suffice either standing alone, or followed by words or gestures that are in themselves ambiguous. For an example of an acquittal in such circumstances, see Montgomery, Libby P.C.J., April 3, 1986 (unreported oral

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1 See Ruest, April 28, 1987, Ducros J.C.S.; Trapid, May 7, 1987, Boilard J.C.S.

2 In Toronto, not only do many cases fail to be recorded in legal publications, many fail to make it to the newspapers.

judgment).[1] In this case, eye contact and gestures were found insufficient for communication.

(b) Vernacular expressions

Some judges have apparently been unwilling to recognize the sexual connotations of street language that are also capable of non-sexual meaning.[2] In the Arsenault case, the expression "one-on-one" used in a conversation was held on the evidence to be insufficiently related to prostitution or sexual services to satisfy the Crown's burden of proof beyond a reasonable doubt, and the accused was acquitted accordingly. While there is no doubt that the English language, particularly in its vernacular forms, is riddled with semantic ambiguity, such decisions might seem to signal a modest revival of judicial naïveté so fashionable a century ago. Unwillingness to take judicial notice, in this context, of the sexual connotations of expressions like "one-on-one," "half and half" or "screw", certainly makes the task of the Crown exceptionally difficult--especially in cases where the accused neither testifies nor calls evidence, and therefore the Crown is unable through cross-examination to pursue the accused's purpose in using the words in question.

(c) Conduct

Such conduct as deliberate heavy revving of a car engine in an area frequented by prostitutes, thereby in fact attracting the attention of a prostitute, was regarded as insufficient either as communication or an indication of obtaining the sexual services of a prostitute in Edwards and Pine, Cronin P.C.J., May 26, 1986. But the acquittal in this case was reversed, and a conviction entered by Cowan C.C.J. on December 19, 1986. Accordingly, save on most unusual facts or in cases involving a credible innocent explanation by the accused, it is now likely that no particular difficulty will arise for the Crown in such cases.

(d) "Curiosity"

This defence is based on the argument that the accused, normally a customer rather than a prostitute, had some purpose in mind other than that of obtaining sexual services or engaging in prostitution. Thus, in Black, Maughan P.C.J. on July 2, 1986, acquitted the accused despite lengthy conversation seeking details of the various services and prices offered by an apparent prostitute, on the basis of his own testimony that he was merely seeking information to gratify his curiosity. The accused's testimony in this case gained credibility from the fact that he had only

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[1] This was an unreported judgement cited both in the Calgary Herald, April 4, 1986, p. D10, and in the Globe and Mail, April 4, 1986, p. A4. The two stories are inconsistent in that the Herald reports that the prostitute initiated eye contact while the Globe reports this was done by the undercover policeman. In either case, the accused was acquitted.

[2] See Marks, Cronin P.C.J., August 6, 1986, and Arsenault, McGivern P.C.J., date unknown.

$21.00 with him at the time, an amount notoriously insufficient to secure any sexual services from a prostitute except perhaps manual masturbation. In other cases, however, this defence has failed because the trial judge has expressly disbelieved the accused's story in the circumstances. It is theoretically possible to run this defence, without the accused testifying, by eliciting other evidence intended to set up a possible inference of innocent purpose, thereby at least raising a reasonable doubt. As a practical matter, however, such a course is most unlikely to succeed; the accused will normally have to testify in practice, albeit not in theory, and thereby run the risk of being actively disbelieved.

(e) The Hutt problem

The deliberate non-use of "solicit" or any of its derivatives in s. 195.1 was clearly designed to prevent a revival of the Supreme Court of Canada's holding that pressing and persistent conduct in respect of one possible customer was required before a prostitute could be convicted under the previous version of the section. It must, therefore, have come as a rude shock to both the police and the Crown when in late October, 1986, acquittals were obtained by prostitutes on the basis that their conduct was insufficiently aggressive to amount to an attempt to stop a motor vehicle [s. 195.1(1)(a)] , a person [s. 195.1(1)(c)] , or to impede movement [s. 195.1(1)(b)] , on the ground that the Hutt test was still relevant.[1] The decision of Sheppard C.C.J. seems to have put an end to the Hutt defence in Vancouver, and there is no evidence that it has prospered elsewhere.

(f) Identity of the Other Party

Particularly in Quebec, the argument has been advanced that the character of the person solicited is an ingredient of the offence. Thus, it is argued, the customer can only be convicted if the person solicited is actually a prostitute, and similarly the prostitute can only be convicted if the person solicited is actually a possible customer. The real focus of this argument seems to be in relation to police undercover operations where the person solicited is actually an undercover police officer. However, it has produced clear rulings that what is actually relevant is the intention of the solicitor, not the character of the solicitee.[2]

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1 See Head, Cronin P.C.J.; Richardson, McGee P.C.J.; Misyk, Maughan P.C.J., and Misyk, Smith P.C.J. The latter two cases are particularly interesting, for the same prostitute secured two acquittals in two days from different judges on this basis. However, the Crown appealed Head, and it was reversed by Sheppard C.C.J. on January 14, 1987: (1987), 32 C.C.C.(3d) 134. This reversal has in turn been affirmed by the Court of Appeal on June 18, 1987: (1987) 2 W.C.B.(2d) 376.

2 See Trapid, May 7, 1987, Boilard J.C.S.; Lemay November 3, 1986, Leger, Municipal Court Judge.

(g) 'Public Place'

As indicated above, it had initially been assumed that s. 195.2 effectively eliminated all difficulties for law enforcement arising from prostitution-related conversations or actions taking place in a motor vehicle. This may not be so. In the Calgary Herald, February 4, 1988, p. F-8, there was a reference to a recent unnamed Vancouver case in which it was held that a motor vehicle moving on a public street was not "located" in a public place, and accordingly was not itself a "public place" for the purposes of s. 195.1(1)(c). Therefore, a communication taking place within that vehicle for the purposes of engaging in prostitution or obtaining the sexual services of a prostitute was not prohibited, and both prostitute and customer were acquitted. However, it appears that the Crown did not argue that on the facts the relevant communication took place before the prostitute actually entered the vehicle. Nevertheless, if this ruling stands, it is capable of undermining police operations and subsequent Crown prosecutions which are premised on the understanding that the speed of an automobile is irrelevant for its designation as a public place.

Undercover Operations

It is quite apparent from the facts of the cases that the police have relied heavily in all jurisdictions on undercover personnel posing as either prostitutes or potential customers. There is no reported case under the present version of Criminal Code s. 195.1 in which a serious attempt has been made to run a defence of entrapment based on the undercover police activity.

It is clear that, as a matter of law, if entrapment cannot be a defence to a criminal charge as an independent substantive defence, then, it can be as an aspect of a wider doctrine of abuse of process. The leading Supreme Court of Canada decision remains Jewitt (1985), 21 C.C.C.(3d) 7. This decision is held to mean that entrapment does not occur if the accused intends to break the law and plans to do so independently of the police undercover operation. Therefore, if a prostitute is intercepted by the police in soliciting, the defense of entrapment would only apply if the police caused the accused to do something which he or she would not have done otherwise. More recent decisions in various provincial Courts of Appeal have both confirmed the abuse of process view of the defence, and given it an essentially restrictive application on the facts. The matter awaits clarification and refinement. The British Columbia Court of Appeal decision in Mack (1985), 23 C.C.C.(3d) 421, was argued before the Supreme Court of Canada on December 10, 1987, and judgment was reserved.

Within the framework of the entrapment decisions as they now exist, there does not appear to be any case under s. 195.1 in which such a defence could have been attempted on the facts with any reasonable prospect of success. Nonetheless, there may be concern about a situation in which communication respecting the provision of sexual services is initiated by a police officer posing as a prostitute, and the potential customer is then charged under s. 195.1(1)(c) based solely on responses to the undercover police officer's initiatives. The facts in Edwards and Pine (1986), 32 C.C.C.(3d) 412 (B.C.Co.Ct.), come close to this concern. Although entrapment is not mentioned at all, Cowan C.C.J. in effect responds to it obliquely by saying that it is a legitimate legislative purpose to seek to deter people from responding to initiatives from a presumed prostitute. The effect of this reasoning is very close to the conclusion of Boilard J.C.S. in Trapid, May 7, 1987, Quebec Cour Superieure, where he held that the intention of the potential customer was crucial rather than the character of the person with whom that potential customer was communicating.

Sentencing

The range of sentencing options available for a violation of s. 195.1 has been the standard range for summary conviction offences: absolute discharge, conditional discharge, probation, fine of up to $2,000, imprisonment for up to six months, and combinations of any two of the last three options.

Cases to date suggest some variation in sentencing patterns in different provinces. The most common sentence was unquestionably the fine, often in combination with probation, with fines for first offenders (or those treated as such) running in the $50 - $150 range in Vancouver, $50 - $400 in Calgary, and in between in other jurisdictions. In Quebec, fines appeared to be somewhat stiffer--in the $300 range for first offenses. There is some evidence that customers were treated more leniently than prostitutes, although some judges have explicitly repudiated any such distinction.[1]

Fines heavier than those in the "normal" range have been noted in cases where convicted prostitutes have been identified as carriers of the A.I.D.S. virus: e.g. Newman, Montreal Municipal Court, April 24, 1987, a fine of $600. In only a few cases has a jail sentence apparently been passed on a first offender. In Sellinger, September 16, 1986, Ludwig P.C.J. (Calgary, Alberta), the accused received sixty days imprisonment. Since no reasons were recorded, it is impossible to know why such a sentence was imposed in what was, to all appearances, a routine case of street

[1] See, e.g. Halliday; Clark, Brahan P.C.J., 2 December 1986 (B.C.).

soliciting by a male prostitute. In Mable, March 10, 1988, Harvie P.C.J. (Calgary, Alberta), the accused, a nineteen year-old female hooker, received 10 days imprisonment for what appears to have been a routine charge.

Both customers and prostitutes have received absolute or conditional discharges. For customers, there appeared to be little judicial consideration of the particular circumstances; but for prostitutes, specific mitigating factors were clearly sought. There is also an interesting sting found in the use of probation for prostitutes but not for customers. It is apparently common practice, particularly in Vancouver, to impose restrictions on a prostitute's movements as a term of the probation order, with violation of that restriction leading to a probable jail term. That such a term is not totally routine was made clear in Baxter, Boyd C.C.J., February 3, 1987, where, on a Crown appeal, such an order was explicitly refused. Underlying such probation orders is the notion of physically moving the prostitute off the street, and in this respect there is a close parallel with the use or misuse of arrest powers and the bail provisions referred to earlier.

Alternative Charging Strategies

It is certainly true that there is no shortage of alternative charges to Criminal Code s. 195.1 in particular fact situations. The law on these alternatives has been explored in detail in the report of the Fraser Committee--gross indecency,indecent acts, public nudity, loitering, causing a disturbance, etc.[1] Aside from gross indecency, there is no evidence that any of the possibilities explored there have been of significant utility to Canadian police forces during 1986 and 1987 in jurisdictions where recourse to s. 195.1 of the Criminal Code has been rendered problematic or outright forbidden by judicial decisions dealing with its validity under the Canadian Charter of Rights and Freedoms.

The City of Winnipeg Police Force has attempted over the years to make use of Criminal Code s.157, prohibiting "gross indecency", either alone or in combination with s.422. Some use has also been made of s.169, prohibiting "indecent acts". The enactment and proclamation in force of Bill C-15 has eliminated s.157 for the future, but even when it was available, there is no evidence that these provisions provided a foolproof weapon for dealing with the nuisances associated with street soliciting. In particular, the trend of decisions under s.157 to confine "gross indecency" to acts that are to be performed in a public place

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[1] Pornography and Prostitution in Canada: Report of the Special Committee on Pornography and Prostitution (the Fraser Committee) , Ottawa: Supply and Services, 1985, Volume 2, Chapters 30 and 31.

effectively limited the utility of this approach in relation to street contact between customer and prostitute, as long as a public venue was not discussed or the proposed venue was a motel room, apartment or another private place, or the lighting in a public venue was insufficient to expose the act to public view. Also, the sexual act itself had to be found capable of being labelled grossly indecent.

In Montreal we have learned that uniformed officers sometimes follow prostitutes and their customers to motels or hotels, and confront the pair, not in the act of soliciting, but at their point of departure from the premises--virtually "inflagrante delit". The police have succeeded, in at least some cases, in charging the prostitute (not the customer) with soliciting, based on the cooperation of the customer and his willingness to appear as a Crown witness. The practice has not been observed in Calgary. It appears to be a charge that depends on the intimidation of the customer, and for evidentiary and constitutional reasons, it would appear a questionable use of the law of arrest for summary offenses. The courts have not addressed the legality of this practice.

The Dual Procedure Proposal

In the context of this discussion of alternative charging practices, it is probably worthwhile discussing one change which has been suggested for the existing law. In the last chapter we outlined reasons why some police forces were interested in making soliciting a dual procedure offence. Although this proposal was advanced for evidentiary reasons, such a change would have general implications for powers of arrest. Because the present s. 195.1 is exclusively a summary conviction offence, arrest is only permissible under s. 450(1)(b) of the Criminal Code, which requires that the accused be found committing the offence. To establish communication, most police have resorted to undercover operations which are costly and manpower intensive. As a hybrid or dual procedure offence, s. 195.1 would attract the arrest powers in s. 450(1)(a) of the Criminal Code, which permits arrest not only of those found committing the offence but also of those in respect of whom there are reasonable and probable grounds to believe that they have committed, or are about to commit, the offence. Accordingly, the potential would be there for wholesale preventative arrests by uniformed officers of known or suspected prostitutes who are on the strolls and appear to be available for business and hence about to commit an offence, even though no actual offence has been committed or could be proved by admissible evidence.

Such a wide arrest power for s. 195.1 could be viewed as an oblique return to the vagrancy law as it existed prior to July 15, 1975 under then s. 175 (1)(c) of the Criminal Code. However, under the vagrancy law, a prostitute found in a public place, and not able to give a valid reason for being there, actually committed an

offence, and was normally charged following arrest.[1] Under s. 195.1, no offence would typically be committed in these circumstances. Accordingly, an arrest under s. 450(1)(a), on the basis that the person arrested was about to commit an offence under s. 195.1, could not be followed by any charge. Nevertheless, a person so arrested could properly be detained for at least some period pursuant to release under s. 454(3) of the Criminal Code.

The dual procedure might also allow arrest for soliciting based on circumstantial evidence. A policeman who observed conversations between known prostitutes and customers, monitored their movements to and from, say, a motel room, and produced documentary evidence of registration, might be able to convince a judge that the discussion which he observed, but did not hear, was, beyond a reasonable doubt, soliciting for the purpose of prostitution. A known prostitute might find it counterproductive to take the stand to rebut the allegation and face cross-examination by the Crown.

While there was no suggestion in the interviews with Calgary police that they wanted an expanded preventative arrest power in respect of s. 195.1 of the Criminal Code or an enhanced ability to create circumstantial cases, there have been suggestions that such powers might be both welcomed, and actively used, in other Canadian cities with a different approach to the control of street soliciting. Whether or not such use would be vulnerable to attack under s. 7 and 9 of the Charter of Rights and Freedoms is a matter for speculation. There must, however, be significant civil liberties concerns about any situation in which persons whose conduct is not in and of itself criminal, and whose potential criminality is not a source of any danger to persons or property, are liable to repeated arrest. A possible solution that would both meet the concerns expressed by the police in establishing records of conviction on the one hand and which would avoid the problems arising from expanded powers of arrest on the other, would be to make s. 195.1 of the Criminal Code a hybrid or dual procedure offence, but to further provide that arrest powers shall nevertheless be those appropriate to a summary conviction offence. There is no apparent precedent for such a solution, but the point is one that may require legislative attention in any event as the list of hybrid or dual procedure offences continues to expand in the Code.

Conclusions

Overall, the jurisprudence under s. 195.1 of the Criminal Code suggests that it has proved a reasonably effective law enforcement tool, albeit one at least theoretically capable of inappropriate application. Attempts by the defence bar to generate emasculating interpretations have on the whole met with relatively little

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[1] This section is discussed in Canadian Advisory Council on the Status of Women, Prostitution in Canada, Ottawa: CACSW, 1984, pp.65-66.

success, particularly at the appellate level. The validity of the section as presently drafted under the Canadian Charter of Rights and Freedoms is still in question, although the only province in which it has been authoritatively struck down is Nova Scotia. In all other provinces it remains a viable charging section, to at least some degree.

In this chapter, the overview of the decided cases been prepared for the interested layman. In the next section, a more advanced overview of the legal theories posed by the different constitutional challenges has been outlined for readers interested in the alternative "methodological" constructions which have been advanced in the three decisions from provincial courts of appeal.

The Charter of Rights and Freedoms and the Legal Theories Posed in Consideration of S. 195.1 in Provincial Courts of Appeal

The legal community has recognized from the very beginning that s. 195.1 is at least potentially violative, in whole or in part, of the Charter of Rights and Freedoms. In fact, the challenges under the Charter have focused almost exclusively on s. 195.1(1)(c), and in particular on that portion of s. 195.1(1)(c) which prohibits communication for the purposes of prostitution. The ingenuity of defence counsel has produced an array of arguments based on the Charter's s. 2(b) "freedom of opinion and expression"; s. 2(d) ""freedom of association"; and s. 7 "liberty" and "principles of fundamental justice". There have also been occasional references to s. 2(c) "freedom of peaceful assembly"; s. 9 "arbitrary detention"; s. 15 "equal protection and equal benefit of the law without discrimination".

The legal theory of these various arguments is complex, and is made the more so by the great variety of judicial responses. Nevertheless, a brief review is likely to be of assistance in analyzing legislative options. Perhaps the least complex entry into this constitutional minefield is to analyze the judgments handed down by the three provincial Courts of Appeal which have already addressed the matter: Nova Scotia, in Skinner (1987), 35 C.C.C. (3d) 203; Alberta, in Jahelka ; Stagnitta (1987), 36 C.C.C. (3d) 105; and Manitoba, in Reference re Criminal Code Sections 193 and 195.1 (1)(c) , 1987 6 W.W.R. 289.

In Skinner , the accused appealed from a conviction, relying on the Charter s. 2(b), 2(d) and 7. In Jahelka ; Stagnitta , the Crown appealed from acquittals granted on the basis of s. 2(b). In Reference re Criminal Code Sections 193 and 195.1(1)(c) , the Attorney General of Manitoba referred s. 2(b) and 7 issues to the Court as abstract questions of law. It is true that in Jahelka ; Stagnitta , the Court heard argument on aspects of s. 7, but the section was expressly not dealt with in the judgment. Accordingly, there may well be further issues and appeals relating to the constitutional validity of s. 195.1(1)(c) of the Criminal Code even in Nova Scotia, Alberta and Manitoba based on arguments not dealt with in these three decisions.

Whenever it is alleged that legislation is invalid because it violates a right or freedom guaranteed by the Charter, the first question is whether the right or freedom is indeed violated by the legislation. If the legislation is found to violate the Charter in whole or in part, it is then necessary to consider whether it can nevertheless be upheld under s. 1 of the Charter as a "reasonable limit" that is "demonstrably justifiable in a free and democratic society". Accordingly, the justifiability of s. 195.1(1)(c) of the Criminal Code under s. 1 of the Charter also requires consideration in relation to each right or freedom in question.

(a) Section 2(b) of the Charter

S. 195.1(1)(c) is normally interpreted as prohibiting communication by both speech and conduct. Accordingly, one issue is whether "freedom of expression" extends beyond speech to protect conduct. It seems clear from the judgment of McIntyre, J., in R.W.D.S.V. v. Dolphin Delivery Ltd. 1986 2 S.C.R. 573, that both speech and expressive conduct are equally protected under s. 2(b), and this is expressly accepted by MacKeigan, J.A., for the Nova Scotia Court in Skinner and by Huband, J.A., for the Manitoba Court in Reference etc. The point is not addressed by Kerans, J.A., for the Alberta Court in Jahelka ; Stagnitta .

The next question is whether "expression" in s. 2(b) embraces economic or commercial matters, or is confined to the political or intellectual sphere. Again, in principle, R.W.D.S.U. v. Dolphin Delivery Ltd. gives an affirmative answer at the Supreme Court of Canada level, and this is accepted in principle by both MacKeigan, J.A., for the majority and Jones J.A. in dissent in Skinner , and by Kerans, J.A., in Jahelka ; Stagnitta. However, Jones, J.A., (dissenting) in Skinner would attach less importance and therefore less protection to economic expression than to political or intellectual expression. In Reference etc. , Huband, J.A., in particular appears to accept the basic approach of Jones, J.A., in Skinner .

The result appears to be that in both Nova Scotia (by majority) and Alberta (unanimously) the definition of 'expression' in s. 2(b) is not controlled by the subject-matter, whereas Jones, J.A., in Nova Scotia and Huband, J.A., (semble for the Court on this point) in Manitoba would hold that "expression" in s. 2(b) is limited or confined by the subject-matter. Given the unattractive nature of prostitution as a business, Jones, J.A., in Nova Scotia, and the Manitoba Court, have little difficulty in finding that s. 195.1(1)(c) does not violate s. 2(b), whereas Alberta and the majority in Nova Scotia find that it does. A fundamental divergence of judicial approaches to interpreting the Charter is thus revealed: where a right or freedom is on its face unqualified, is it appropriate nevertheless to limit its scope by reference to public policy considerations or is such balancing exclusively a function of s. 1?

Although the tests for the application of s. 1 of the Charter have been authoritatively set out by the Supreme Court of Canada in Oakes , 1986 1 S.C.R. 103, their application to s. 195.1(1)(c) of the Criminal Code in the context of s. 2(b) of the Charter has produced significant disagreement. The Oakes tests may be summarized as follows:

1. Is the legislative objective in enacting the impugned legislation related to a substantial and pressing concern;

2. If so, are the means chosen to deal with that concern such that they are rationally related to it, and involve the minimum necessary interference with Charter rights and freedoms;

3. There must be proportionality between the importance of the legislative objective and the negative impact of the chosen means on particular individuals or groups.

The majority of the Nova Scotia Court, in Skinner , found that s. 195.1(1)(c) met none of these tests and was therefore totally invalid. The Manitoba Court in Reference etc. , and Jones, J.A., in Skinner , found that if resort to s. 1 were necessary at all, s. 195.1(1)(c) unquestionably met these tests and therefore was valid. The Alberta Court, in Jahelka ; Stagnitta found little difficulty with the first test and the first part of the second test, but was troubled certainly by the second part of the second test and perhaps by the third test, because, at least in theory, s. 195.1(1)(c) was capable of being used to suppress expression in circumstances not strictly necessary for the suppression of the nuisance occasioned by street soliciting.

In the result, the Alberta Court in fact applied s. 1 and upheld s. 195.1(1)(c) on the basis that, on the actual facts of the cases before it, and on the basis of any reasonable approach to the enforcement of s. 195.1(1)(c), there was neither unnecessary interference with anyone's s. 2(b) freedoms, nor an excessively negative impact on anyone's s. 2(b) rights. However, the Court warned that it would be prepared to declare s. 195.1(1)(c) unusable in respect of particular fact patterns that did involve unnecessary interference or excessive negative impact if and when they actually arose. Again, this raises a fundamental question of judicial policy in interpreting and applying the Charter: must legislation be declared invalid if it would violate the Charter in a hypothetical 'worst case' of unlikely occurrence, or can it be upheld for everyday use leaving the 'worst case' for situational disposition of law enforcement authorities who are foolish enough to generate it? The answer to this question, which must be given by the Supreme Court of Canada, has profound implications for legislative decision-making and legislative drafting.

In summary, the present position is that, of the three Courts of Appeal that have addressed the interface of s. 2(b) of the Charter and s. 195.1(1)(c) of the Criminal Code, one has held that s. 195.1(1)(c) violates s. 2(b), and cannot be saved by s. 1; one has said that s. 195.1(1)(c) violates s. 2 (b) but can be saved by s. 1 save in the hypothetical "worst case"; and one has held that s. 195.1(1)(c) does not violate s. 2(b), and, even if it does, can be saved entirely by s. 1. Lower court decisions reflect the same diversity of perspective. While it would be a bold person who would confidently predict the ultimate outcome before the Supreme Court of

Canada, a possible assessment is that adoption of the Nova Scotia approach striking down s. 195.1(1)(c) entirely would leave little, if any, room for Criminal Code provisions dealing with street soliciting by prostitutes. On the other hand, both the Manitoba approach and on the whole the Alberta approach suggest that if Parliament does wish to use the Criminal Code for this purpose, the present s. 195.1(1)c) is an appropriate vehicle for so doing.

(b) Section 7 of the Charter

The actual terms of the Attorney General of Manitoba's reference to the Court of Appeal simply referred to "s. 7," tout court. Accordingly, it was left to counsel to determine what aspects of s. 7 would in fact be argued. In the actual judgment in Reference etc. , s. 7 issues are addressed by Philp, J.A., for the Court. He identifies three separate arguments. First, that s. 195.1(1)(c) is impermissibly vague; second, that it is excessively broad in relation to its objectives; third, that it improperly interferes with the right to work in a lawful trade or occupation.

Philp, J.A., disposes summarily of the argument that s. 7 can be violated by overbreadth by saying that overbreadth only arises as a constitutional issue under s. 1 once it has been determined that a right or freedom is violated by the legislation in question. It is not a s. 7 issue at all, in his view, because it is not an interest encompassed within the "principles of fundamental justice". In this respect, he declines to follow the United States constitutional reasoning that has on occasion allowed overbreadth to amount to constitutional infirmity under the "due process" clauses of the Constitution.

The first argument, of impermissible vagueness, is also derived from the United States precedents under the "due process" clauses. Philp, J.A., doubts whether the doctrine has any constitutional status in Canada under s. 7 of the Charter, being of the view that save perhaps in the most extreme case there is nothing involved that would fall within the "principles of fundamental justice". Furthermore, it is not at all clear, in the view of Philp, J.A., that the right to "liberty" enshrined in s. 7 is in any way interfered with by legislation that may result in a prison term for an offence the contents of which are not reasonably clear on the face of the legislation.

The third argument, that the right to "liberty" in s. 7 extends to the right to work in a lawful occupation, is also rejected. After extensive analysis of the authorities, Philp J.A. concludes that "liberty" does not extend to economic or commercial interests, which are left unprotected by s. 7. The jurisprudence on this point is in some disarray, however, and so Philp, J.A., also rejects this s. 7 argument on different grounds, namely that while an act of prostitution in and of itself is not an illegal act, it does not follow that it, and all its incidents, are therefore legal. Prostitution itself may be merely tolerated by the law, rather than

legitimated by the absence of proscription, and in any event the business of prostitution is hardly a lawful one in Canada. Furthermore, Philp, J.A., would be prepared to hold that the nature of prostitution is such that, legal or not, it cannot be embraced within the constitutionally protected framework of "liberty".

Overall, then, the Manitoba Court of Appeal has given extremely short shrift to s. 7 arguments relating to s. 195.1(1)(c), notwithstanding that these same arguments have found occasional favour in lower courts. However sceptical one may be of the views of Philp, J.A., that excessive vagueness and overbreadth have no place at all in the restraints on legislation imposed by the "principles of fundamental justice", and that economic or trade interests have no place in concept of "liberty" protected by s. 7, it is, with respect, difficult to quarrel with the ultimate conclusion that it would require something far more extreme than s. 195.1(1)(c) to found constitutional impropriety on any of these grounds.

(c) Other Charter Sections

The Nova Scotia Court of Appeal in Skinner found s. 195.1(1)(c) inhibited free association between prostitute and customer, and therefore violated s. 2(d) of the Charter. The reasoning parallels the Court's reasoning on s. 2(b). Although neither the Alberta nor the Manitoba Courts addressed s. 2(d), the reasoning of both Courts on s. 2(b) again suggests the same result under s. 2(d).

Other arguments have surfaced occasionally, as, for example, the argument that s. 195.1(1)(c) is so broad in scope that its invocation results in an arbitrary arrest or detention contrary to s. 9 of the Charter, because of the absence of defined or predictable standards of tolerated and prohibited conduct. This seems to be little more than a re-worked version of the 'impermissible vagueness' argument addressed to the Manitoba Court of Appeal under s. 7 of the Charter, and would doubtless lead to the same result as that argument.

Finally, perhaps the prize for ingenuity, if not brazenness, might go to the defence counsel who argued that, although marital status is not an enumerated head (or ground) upon the basis of which discrimination is prohibited under s. 15(1) of the Charter, nonetheless legislation which, on its face, or, in practical effect, discriminates for or against married persons is constitutionally suspect. Thus far, many lawyers might go. Where most would not go, it is submitted, is to apply this to s. 195.1(1)(c) on the basis that married persons enjoy sexual activity within marriage whereas unmarried persons need prostitution to satisfy their sexual needs and are therefore discriminated against by laws restricting access to prostitutes. The argument has yet to find judicial acceptance.

Overall, until the Supreme Court of Canada has spoken, it is difficult to see that the present jurisprudence relating the Charter of Rights and Freedoms to s.

195.1(1)(c) suggests the need for any amendments to that section or for any radically new legislative approach.

V. PROSTITUTION IN CALGARY: THE STROLLS, THE NUMBERS AND THE BACKGROUND CHARACTERISTICS

Manifest Objective of the Bill: Curtailing Street Soliciting

The chief justification for introducing the anti-soliciting law was to attempt to decrease the number of persons involved in the street trade--the practitioners as well as their customers--by increasing their liability to criminal arrest and conviction. We have outlined the pattern of charges in an earlier chapter showing the levels of control during and after the periods of implementation. What is the attitude of the practitioners to the state's attempt to prevent street soliciting? Has liability to arrest and conviction influenced the prostitution trade? Has it affected the financial returns to prostitution? the numbers of people working? the supply of customers? the kinds and locations of sexual services? the growth of off-street soliciting? the reliance on pimps? the dangerousness of street life? These were the sorts of questions we pursued through interviews with male and female hookers to determine the effects of the legislation. However, it was also necessary to make detailed observations of the ecological distribution of the trade, and to inquire into the major source of off-street prostitution--the escort business.

In this chapter we report the results of systematic observations of the street trade including an identification of the geographic areas affected by street soliciting, the results of observations regarding the numbers of people working these strolls, and some of the results of our interviews with the prostitutes dealing with their reasons for working, their records of arrest and prosecution, and their knowledge of the law. In the following chapter we will describe how C-49 has impacted on their work and their response to it. We shall subsequently describe changes in the structure and growth of the Calgary escort industry, as well as prostitution and the social welfare and community concerns with it.

The Calgary Soliciting Strolls

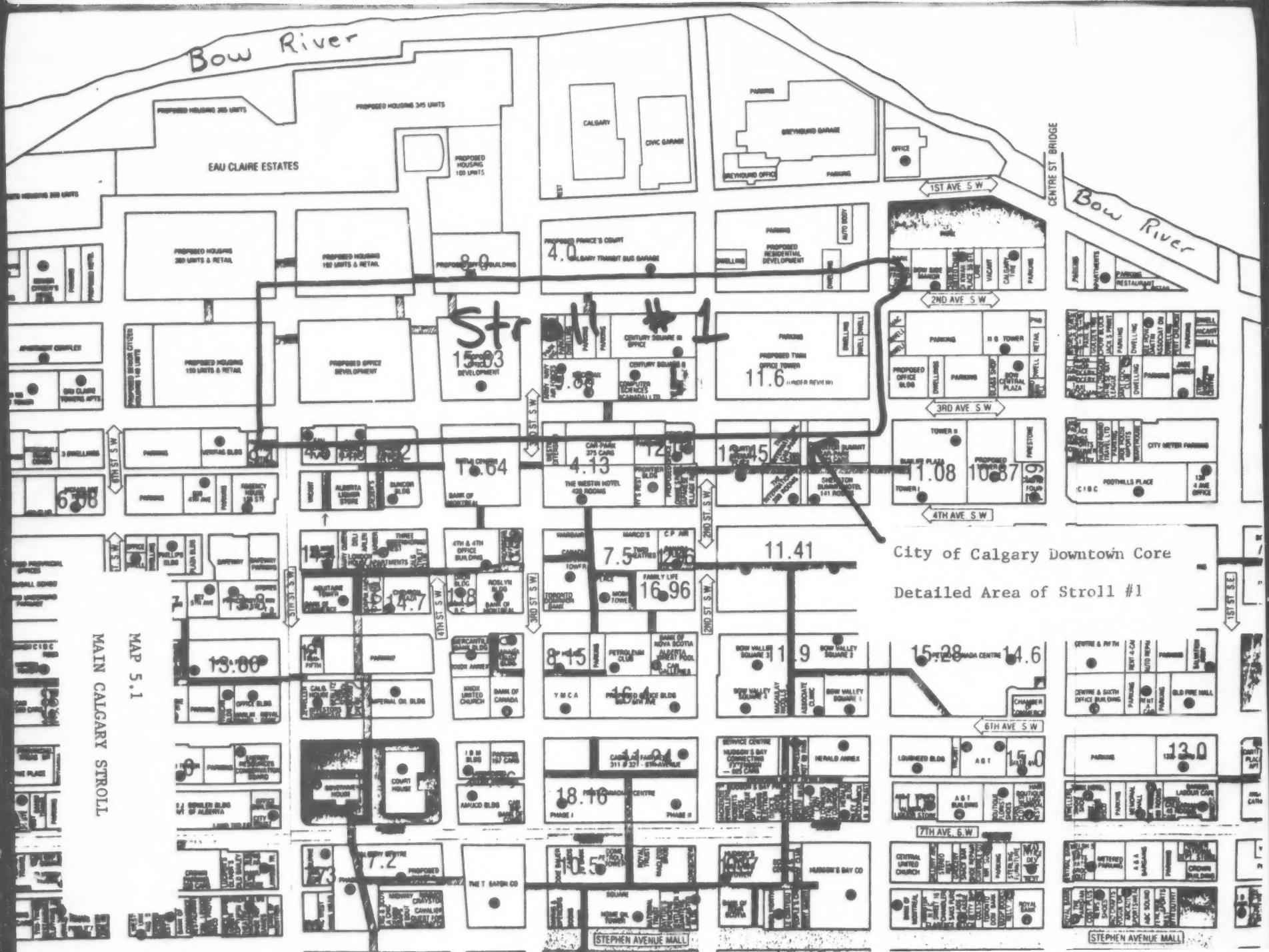
Four discrete areas are routinely frequented by Calgary hookers. The first is immediately north of the city core and south of the Bow River. Bordered by Chinatown on the east, it comprises Second and Third Avenues SW from First Street to Fifth Street. The stroll also extends to the Mac's convenience store on the corner of Sixth Street and Fourth Avenue. Although slated for high-rise office development, at the present time the area consists mostly of open parking lots and buildings under construction. In addition, there are several one and two story offices, a popular strip bar and the old Calgary Transit bus barn. A new high-rise office tower is being completed between 2nd and 3rd Avenues and 3rd and 4th Streets, and a new YMCA building will soon open north of this in 1988. About a

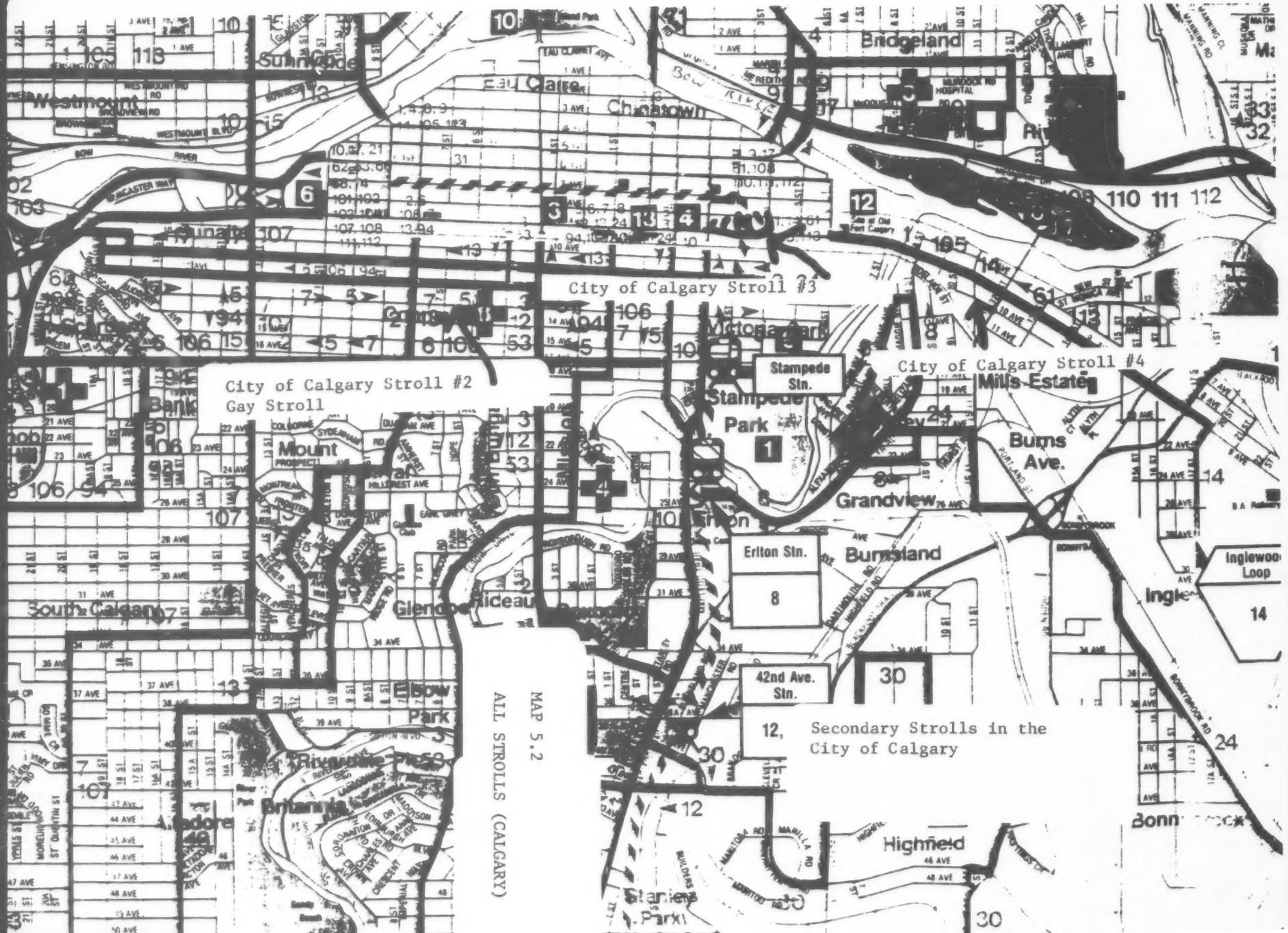
block northwest of the stroll, and in clear sight of the vehicular and human traffic, sits the exclusive high-rise of Eau Clair Estates. In the summer of 1987 the Chairman of the condominium board complained that residents were annoyed by the proximity of the stroll, and wanted the police to relocate it.[1] A year later, a petition signed by over 100 residents of the Estates returned to the Police Commission to ask the police to remove prostitutes from the stroll.[2] Ironically, this site was created by the police in the early '80s prior to the construction of Eau Claire Estates in order to alleviate the nuisance of women working on 4th Avenue in front of the major hotels, and on 9th Avenue near the Palliser Hotel and the Calgary Tower. The Calgary Police Commission advised the Eau Clair Estates residents that the matter of street soliciting was under review both by the appeal courts and by the Department of Justice, and declined the request to relocate the trade to another neighbourhood. In July of 1988 the Commission created a task force to consider the feasibility of relocating the stroll to another area.

The main Calgary stroll is ecologically unique. It is one of the most clearly defined soliciting sites in Canada. It is on sidestreets "behind" the downtown, not on any of the city's main streets as in Montreal and Toronto. The eastern half is relatively well lit, and there are few doorways and other recesses to fade into, making the street walkers highly evident. Late at night, traffic escalates and the zone of activities spreads out somewhat westward along an unlit section of 2nd Avenue near Eau Claire estates, but never into the residential areas at 5th Street. Also, some women wander down from 3rd Avenue to 4th Avenue and 1st Street. Police patrols are frequent on the stroll day and night. Pimps also patrol the stroll but do not remain on view for long. Spotters are virtually non-existent (spotters are sometimes employed in Vancouver and elsewhere to warn hookers of the arrival of police).

The second major stroll is frequented by young male hustlers who cater to a gay and bisexual clientele. It is located in a high density residential section of south-west Calgary in the vicinity of 13th and 14th Avenues at 5th and 6th Streets. The focal point of this stroll is a vacant half block on 13th Avenue with a low concrete wall along the north side. Policing here is not as frequent, although as of 1985 a specialized police team consisting of two or three officers had established good rapport with the hustlers. Several gay bars are within a kilometer of the stroll and the hustlers frequent these establishments primarily for entertainment, although potential dates can also be contacted there. Also, two female hookers frequent the male stroll on occasion, as does a transvestite, although the latter also works on the main female stroll. There appears to be much more socializing among the hustlers on the male stroll and, in contrast to the financial mentality which

[1] Calgary Police Commission Meeting, July 17, 1987.
[2] Calgary Police Commission Meeting, July 22, 1988.


Bow River
EAU CLAIRE ESTATES
CENTRE ST BRIDGE
Bow River
1ST AVE S.W
2ND AVE S.W
3RD AVE S.W
4TH AVE S.W
6TH AVE S.W
7TH AVE S.W
1ST ST S.W
2ND ST S.W
3RD ST S.W
4TH ST S.W
5TH ST S.W
1ST ST S.E
STEPHEN AVENUE MALL
Stroll #1
City of Calgary Downtown Core
Detailed Area of Stroll #1
MAP 5.1
MAIN CALGARY STROLL



MAP 5.2

ALL STROLLS (CALGARY)

12, Secondary Strolls in the City of Calgary

marks the other strolls, somewhat less concern for "business". This is evident from the erratic shifts in the number of persons hanging out on this location. Also, pimping is virtually unknown among the hustlers.

The nature of the male market is also different. Most hustlers are self-labelled gay men selling gay sex. Many left home over conflict about their sexual orientation and found acceptance on the street. However, some appear to be "straight" men who allow gays and bisexuals to perform fellatio on them. Two of our subjects were living with two female hookers--both pregnant. This suggested to us that anxiety over sexual identity is a livelier issue among those found in this niche. Also, part time work is more evident here. Where the main female stroll would see several women mid-day during the summer, the male stroll rarely saw mid-day hustlers, the trade being confined to the later evening hours. Also, the police have taken few hustlers to headquarters for identification, and there appears to be a reluctance to mount "sting" operations against the male prostitutes and their clients. As the situation was explained to us by Calgary Vice detectives, the hustlers were just as likely to "give it away for free" as to charge. We also suspect that, generally speaking, the police are more uncomfortable working undercover trying to entrap the young men than the young women. In addition, since the male prostitutes are not pimped, they are not as important for police intelligence as the female prostitutes whose pimps might be a source of drug trafficking, violence and other criminal activities.

The location of this stroll in a high density residential neighbourhood has resulted in some complaints from the managers of the adjacent apartment buildings. Since the numbers working here are usually quite low, the community concern has not been very great. Although we have counted as many as sixteen hustlers late in the evening midweek in August, there are usually only a handful wandering the block--typically less than five--and, unlike the young women on the main stroll, they are dressed quite inconspicuously and typically do not behave in a way that draws attention to themselves or which interferes with the traffic. Initially, one of our more difficult observational problems was determining which men to count as hustlers, and which as pedestrian traffic. Prior to our interviews, we relied on repeated sitings of the same individuals and their search for eye contact with potential customers (us) to determine who was working and who was not. The lesson drawn here was that this part of the trade was not as intrusive as the female activity on the main stroll. In the spring of 1988 there was increased pressure from apartment managers to re-locate the soliciting, and the police were monitoring the numbers, the addresses of the hustlers and examining other potential locations where neighbourhood impact would be less obtrusive. A sting in the last week of June 1988, led to the arrest of four hustlers; earlier the same month twenty-four females were arrested on the main stroll. The Police Commission created a task force to investigate this problem in the spring of 1988.

There are two other female strolls. The first is an area near the King Edward Hotel on 9th Avenue SE from Macleod Trail to 5th Street, and on 8th Avenue from 5th to 6th Street. The other is also in east Calgary, around the National Hotel near 9th Avenue and 12th Street SE. Both are "down market" bars. In comparison with the main stroll, the number of hookers in the two east Calgary locations is relatively small, the women are somewhat older, more Natives work in these locations and the pimps are believed to be involved with motorcycle gangs. Also, women working here have a reputation for cheaper services. Police presence is evident in these locations also, and the women are all known to the police. Because of their proximity to working class housing, the community of Ingersoll has experienced some annoyance at the traffic, especially around the Alexandra Community Center on 9th Avenue (about halfway between the two east Calgary strolls) around which some of the hookers were turning their car dates during the summer of 1987.

It is quite possible that female hookers will be found in other locations than these areas-usually trying to evade detection by the police. We have observed individuals soliciting on an irregular basis near the Cecil Hotel, under the Calgary Tower, in front of the Palliser and York Hotels, and at 9th Avenue and Macleod Trail. Some of these were areas in previous years which had hosted concentrations of working women.

There is a lesson in the way the strolls have been largely segregated from middle class residential areas and public concerns over soliciting. In contemporary Calgary, prostitution is not viewed by the public as a major community concern. However, Calgary, unlike Toronto and Vancouver, has seen minimal land-use friction. Future development of the main stroll makes this inevitable. At present, interest is most intense near middle class properties located a block north off the main stroll, although not immediately east in the high density area of Chinatown. This suggests that Calgary tolerance of the male libido may wane when soliciting occurs in "our" neighbourhoods.[1] Tolerance for prostitution, then, is a related, but analytically separate issue from land-use conflicts, and may abate as land-use conflicts intensify. At that point, morality may occlude nuisance as an issue in public discussions. When the matter was discussed in the Police Commission meetings in the summer of 1987 and 1988, nuisance was still identified as the key issue, and the policy discussion was solely which vicinity the stroll would be confined to. Neither citizens nor commissioners relished the prospect of formally relocating the stroll to another neighbourhood.

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[1] James Gray describes a similar process of the segregation of redlight districts in early Calgary and Winnipeg. Segregated brothel areas were dogged by urban development and land-use competition resulting in police closures. This displaced the trade underground beyond police control. The red light areas were subsequently re-sited in the interests of law enforcement. In Winnipeg in particular public worries over the moral issues appeared to intensify with land-use competition. Red Lights on the Prairies, Regina: Prairie Harvest Books, 1971.

The Counts: Estimating the Population of Street Prostitutes

During the summer and fall of 1987 we conducted systematic counts of all four strolls to determine the amount of street activity in different locations, different days of the week and different times of the day. We were also interested in learning whether there were seasonal variations in the street activities. In coordination with counts being made by researchers at other sites, we undertook week-long observations during seven days in June and August to contribute to a national profile. Starting on the hour, we drove through all the strolls during the period from 8:00 PM to Midnight (ending before 1:00 AM) on every day of the week, and on Thursday and Friday undertook around the clock counts from 8:00 AM Thursday until 1:00 AM. early on Saturday morning. This amounted to sixty-seven hours of counts over the period of a week (five days at five hours, plus forty-two continuous hours Thursday-Friday). This was undertaken June 18-25 and again August 16-23.

In addition, we undertook further counts in Calgary during the fall months, since our casual observations suggested that in September the level of street activity declined significantly and appeared to remain low throughout the fall. We repeated our observations on six dates in the fall. These were conducted exclusively on Fridays from noon until one in the morning from October 30 to November 20 (save for the hours starting at three and at seven--due to a shortage of observers) and from eight until one on December 4 and 11. This entailed a further fifty-four hours of counts (four days of eleven hours, two of five hours). One complete round of the four strolls was a 14 km circuit. Consequently, we were usually only able to observe each stroll for a short period of time in each hour as we drove around between the strolls--sometimes fighting traffic to complete the circuit in under sixty minutes. When time permitted, we occasionally conducted the counts on foot, particularly on the main stroll, and between circuits, again as time allowed, parked near the main stroll to observe the level of activity.

It would be erroneous to assume that it is readily evident what the counts were really measuring. Our data were snapshots of populations taken on an hourly basis, as opposed to continuous videotapes of the activities of individual prostitutes who might be coming and going as business dictated. We were attempting to determine how many prostitutes were "on view" soliciting, and from this we inferred the demand for sexual services. How reliable was our approach? Another way of asking this is, how serious were the false positives and false negatives in our observations? On our first shift, we were puzzled by persons whose status we were unsure about, and kept notes of observations that seemed anomalous--like the young men being picked up from the corner of 12th Avenue and 1st St Street SW by older men driving expensive cars. This was not a site we had been advised of by the

police, nor was it frequented by anyone with the typical blue jeans, jean jacket and sneaker "uniform" so common on the gay stroll. This turned out to be the causal labor-market, a corner where indigent men wait for short time work assignments. During the same twelve hour shift, we noticed young women leaving the stroll early in the morning, provocatively dressed in black tights and white boots, and followed them--to their High School. Neither group was counted. On the other hand, we made observations of a woman who seemed to be dressed too conservatively and who behaved too inconspicuously, particularly during the mid-day, to be evident as a prostitute. When we subsequently saw her recurrently through the day on the main stroll in the company of other prostitutes, we retroactively edited the counts to include her. On the whole, we pursued a conservative policy of not counting persons whose status we were unsure of, keeping notes about questionable observations, and comparing our notes with the other three persons engaged in the counts. After a single full shift, such ambiguities occurred rarely as we came to identify the same persons recurrently, and as we came to recognize the parts of the strolls frequented by different persons. For the most part, there was very little movement by persons between different strolls. Also, the research assistants conducting the counts were working as interviewers, and had an excellent grasp of who was working.

Methodologically, there was another issue: we were aware that the absence of individuals could not be taken as evidence that they were not working--since empty corners could just as readily be evidence of off-street activities with the dates. While a videotape record would catch this, a snapshot approach was liable to underestimate the population. This was a more serious issue.

In our view, there are two models of demand for service for determining the gravity of this sort of error. In the first model, we might suppose that the demand was high (i.e. the ratio of dates to prostitutes was high). This model implies that the ratio of time spent soliciting or advertising on the street to the time spent with the dates off the stroll would be low: little street advertising, a lot of off-street action. Consequently, anyone counting hookers by counting the amount of street advertising would underestimate the numbers. Actually, this type of error in the long term would be a minor concern since, if we assume a mobility in the supply of hookers, shortages would be self-correcting. High demand would create incentives for other hookers or potential hookers to relocate to this market, thereby matching demand--as in the movement of prostitutes to national fairs, exhibitions and the like where demand is relatively intense although short-lived.

The alternative model would suggest that the demand was relatively low in terms of the number of girls available compared to the number of dates being requested--in which case the ratio of advertising time to working time would be high: lots of prostitutes standing on the corners waiting for work but relatively few

dates. In this scenario, estimates of the population of hookers based on the number of them advertising would better approach reality, despite the snapshot approach.

It was our impression in Calgary that the majority of people hooking in 1987 actually had very few dates on an average day--one or two daily on a consistent basis. Also, by their own accounts, the hookers spent as little time with the dates off the street as possible. We observed hookers returning from a date within a quarter hour of leaving the stroll. It is possible to make an educated guess about how much our records underestimate the numbers of prostitutes working at any point in time. If we estimate that every hooker gets two dates per night (which is a fair estimate since some girls may go a day or more without "breaking") and that each date takes thirty minutes (a liberal estimate since most dates entail fellatio performed in a car), then we may infer that every hooker is off the stroll turning tricks for sixty minutes per shift. In our sample, the women reported working about seven or eight hours per day--which suggests that a random check, a snapshot, would fail to identify them in only about one hour out of seven or eight. Or to put it alternatively, for every six counted, we could probably assume that as many as seven were working. For male hustlers, however, our impression was that this calculation would lead to an overestimation of the numbers on the male stroll since the hustlers would be fortunate to all turn a single date per shift, making the observed numbers on the male stroll closer to the actual numbers working.

Another factor which requires consideration is the schedule of the consumers. It is our impression that demands for sexual services or sexual entertainment are more intense later at night as the conventions wind down, as the second shift workers quit for the night, as the bars close, and as the patrons begin to look for company. Consequently, the larger numbers of prostitutes observed in the later hours--despite the off-street servicing time--is interpreted as evidence of the mobilization of labour to match demand--not as evidence that work diminishes with the later hours. Having identified these provisos, we now turn to our estimates.

The Calgary police reported that, aside from escort service workers, there were about 120 to 130 female street prostitutes known to them in the city in 1987. It was the view of the Calgary Police Service, social workers and hoteliers in the core area that there has been no dramatic shift in the numbers of street prostitutes working in Calgary in the 1984-1987 period, and, consequently, little reason to believe that the numbers of persons working had been affected by Bill C-49.[1] The views of the Police Service were in marked contrast to the picture painted by the earlier Police Commission brief to the Fraser Committee (January, 1984) which

[1] Though there were many presentations made to the Fraser Committee by various Calgary groups and individuals, the plurality of concern was over pornography as opposed to prostitution, and the prostitution submissions were more concerned with protecting the rights of persons working as prostitutes, than over their negative impact on the community.

characterized the stroll as replete with serious interference of local commerce, violence among the prostitutes and pimps, and danger to young women who found themselves in the area on legitimate business.[2] This perception about the stability of the stroll in terms of the numbers of persons working and the levels of violence was also supported by the prostitutes themselves, as we shall see in the next chapter. Our counts suggest that at the peak periods of demand, we repeatedly observed between forty and sixty hookers, male and female, throughout the city. If we take the highest peak--a one time observation of sixty--recorded on June 18 1987, even allowing for our margin of underestimation, we could not put the number of prostitutes working at any one time much over seventy. Ironically, we also interviewed a total of seventy prostitutes. Even allowing for the sixty-observed-ten-inferred-rule outlined earlier, it was our impression based on the number of refusals experienced by interviewers that the number interviewed fell substantially short of the entire population, though it probably covered a substantial plurality of the population. How can we make sense of the discrepancy between police information, the street counts, and our own sense that we were far from interviewing everyone?

First of all, the police are counting people who are travelling through Calgary between their homes and their destinations. Many hookers work in different cities, especially during the summer and, even though they might spend little time in Calgary, become part of the police count. It ought to follow from this that the population of prostitutes increases during the summer. However, if Calgary's hookers and hustlers are as mobile as the others, then the rotation of the population would even itself out. This would result in the police count being higher than the numbers actually available at any one point in time, and many of those interviewed being from out of town--which is what we actually found.

A second factor is that many people in the trade work intermittently. Although the majority of those we interviewed tended to work every night or most nights, clearly some were only hooking on a part time basis. This impression was reinforced by the change in the number of hours spent on the streets in the fall versus the summer: while the numbers of workers evident during the peak hours changed only marginally, the total number of hours spent on the street in the off-hours declined substantially. This suggests that the number of hookers in the business was relatively stable, but the hours of service appear to have changed substantially.

A third and related factor is that many of those counted as prostitutes and maintained on the official records may leave the business after a short career. Although the people we interviewed had an average of four years experience, many

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[2] Report of the Special Committee, Pornography and Prostitution in Canada, Ottawa: Supply and Services, 1985, p. 424. This melodramatic portrait was not corroborated by our own observations.

had been involved for only a short period of time prior to contact by us. For women, the mean number of years was four, but the median was three years, and the mode was two years and three and a half years (bimodal)--suggesting that most of the attrition in the profession occurs towards the early years. In other words, most of those who have prostituted have done so briefly. If this inference is valid, then the police records of prostitutes would be biased upwards by including those who have ever prostituted, not those just currently involved. The snapshots would be a better indication of the latter. This is consistent with our observation that the peaks in activity always fell in the forty to sixty range, and that variation was never observed above these values.

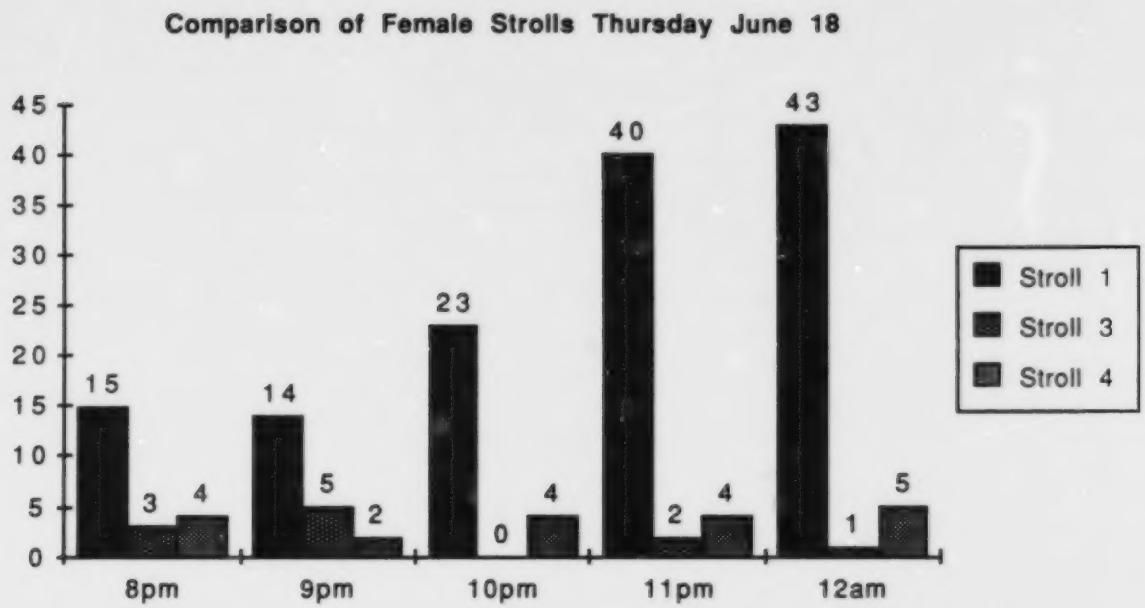
In what follows, we describe the variations in counts at different times and places as assessed by our direct observations in order to describe where the market operates, how big it is, and when it is most active.

1. Variations Between the Strolls

If we were to add the total number of observations of prostitutes recorded on each stroll over all the hours of systematic counts from June to December, we would grossly overestimate the number of hookers working, since we would be counting most people repeatedly. Nonetheless, we could still infer from this the relative amount of activity on each of the strolls. A total of 3,794 counts were recorded during our 188 hours of observation. Seventy four per cent (2,814) were made on stroll one, ten per cent (413) on stroll two, five percent on stroll three (217), and nine per cent (341) on stroll four. The balance, two per cent (9), were observed elsewhere. Clearly, the market is differentiated, not only by gender but also by location and status.

How many individuals were observed in each of the strolls during an average week? The following three charts represent observations made in June and present female and male counts separately. The first chart shows the variation in the number of prostitutes observed in the three female strolls on June 18. Clearly, stroll one contains the majority of street activity in Calgary. The upward trend in numbers over the evening was typical of virtually every shift of counts taken in stroll one. This trend was not typical of the third and fourth female strolls, although the numbers counted on the latter were never considerable.

Chart 5.1



However, there is also substantial activity in stroll two with male hustlers. The number of hustlers in June (see Chart 5.2) appears to fluctuate dramatically, and there is little evidence of systematically larger numbers soliciting later at night, as in the main female stroll. This was confirmed by the counts taken in August 1987, where male activity was registered as erratic, and where the activities on the stroll appeared to be more socially than economically motivated (see Chart 5.3).

Chart 5.2

Hustler Stroll June 18-24

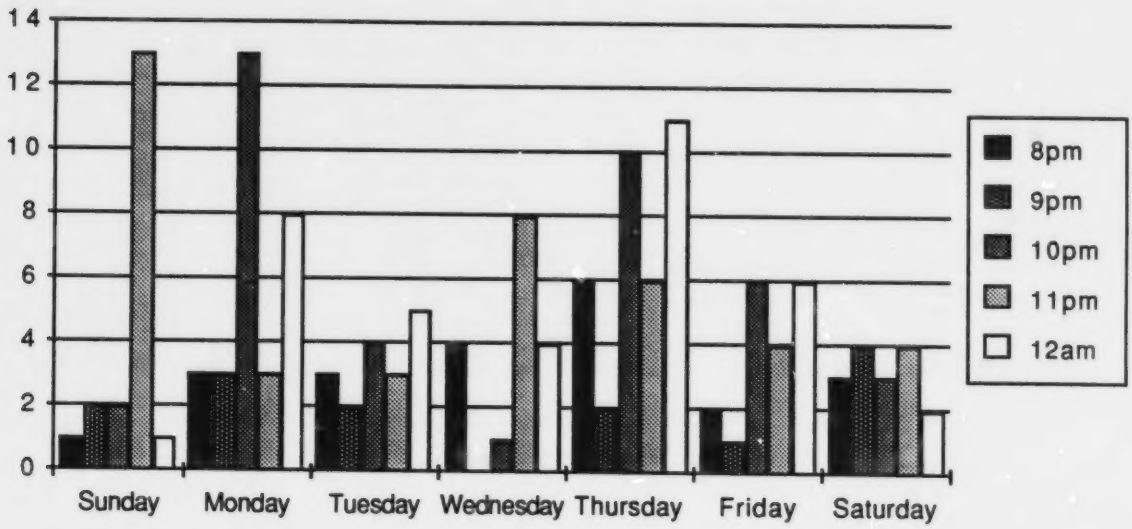
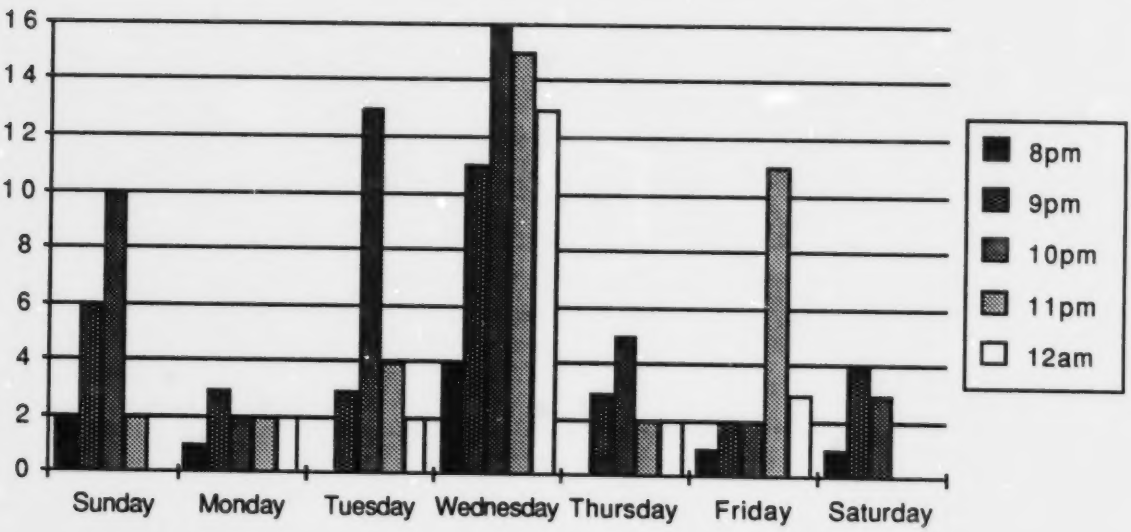


Chart 5.3

Hustler Stroll August 16-22



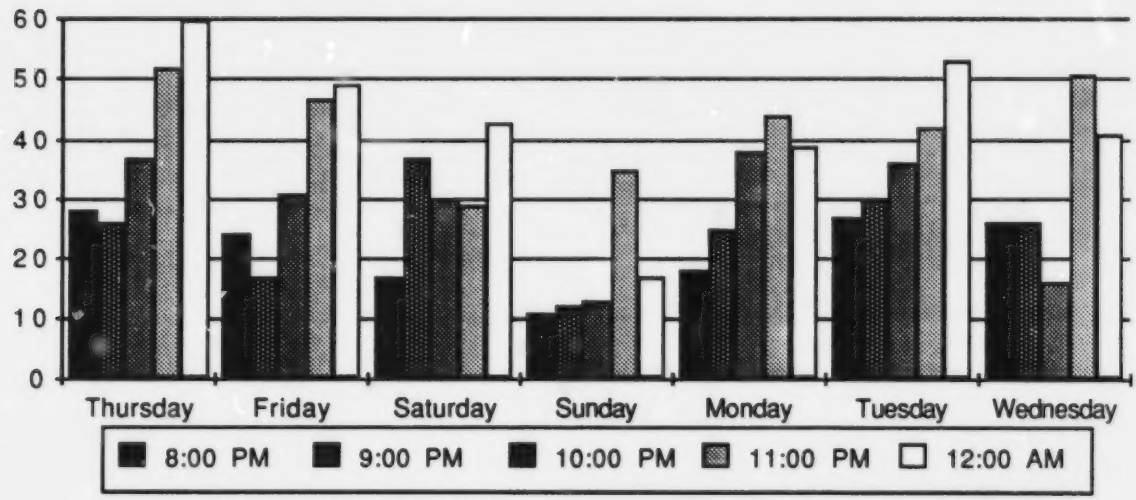
We kept records of the weather during the counts, but this seems to have been inconsequential in explaining variations, since in both June and August the temperatures and conditions were consistenly mild.

2. Variation over the Days of the Week

Which day of the week is busiest in terms of the numbers of prostitutes observed? If we look at the 8:00 PM to 1:00 AM period on each day (i.e. counts starting at 8:00 and continuing the circuit each hour on the hour until the last round starting at 12:00 midnight), the June data suggest that Thursday is the busiest period--a conclusion recommended by the magnitude of business during the "midnight hour". Also evident is the relatively lower levels of business on Sunday evenings, with a gradual buildup to Thursday followed by a steady decline to Sunday.

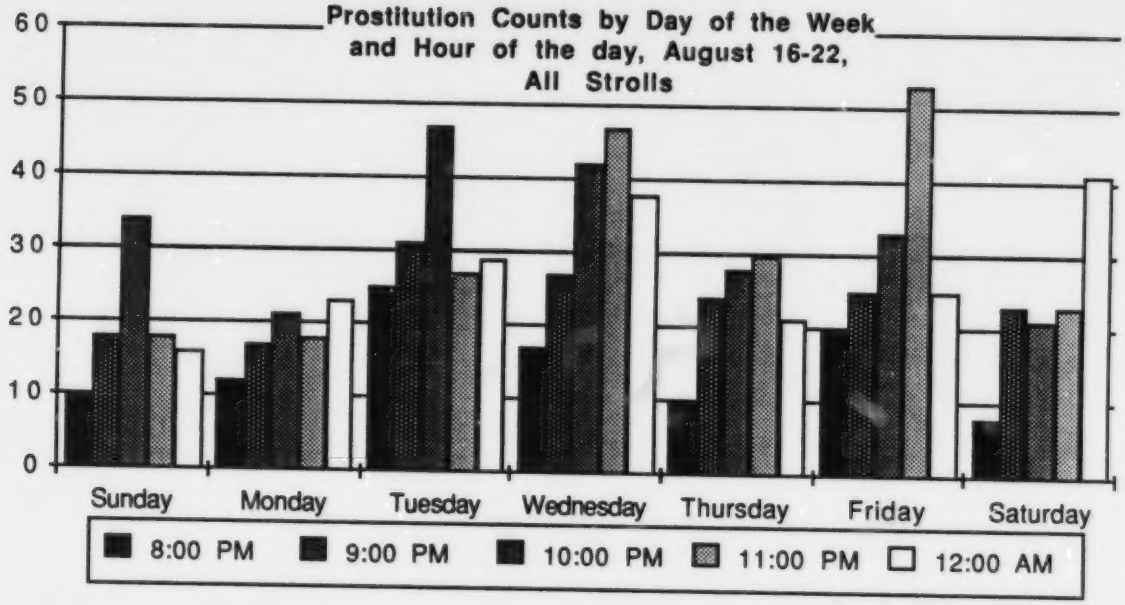
Chart 5.4

Prostitution Counts by Day of the Week and Hour of Day June 18-22, All Strolls



The August pattern confirms our observation about Sunday business, but suggests that the peak in business is not necessarily Thursday. On the whole, there is the same upward climb in numbers as the evenings wear on, although the numbers peak at 11:00 PM from Wednesday to Friday, and at midnight on Saturday.

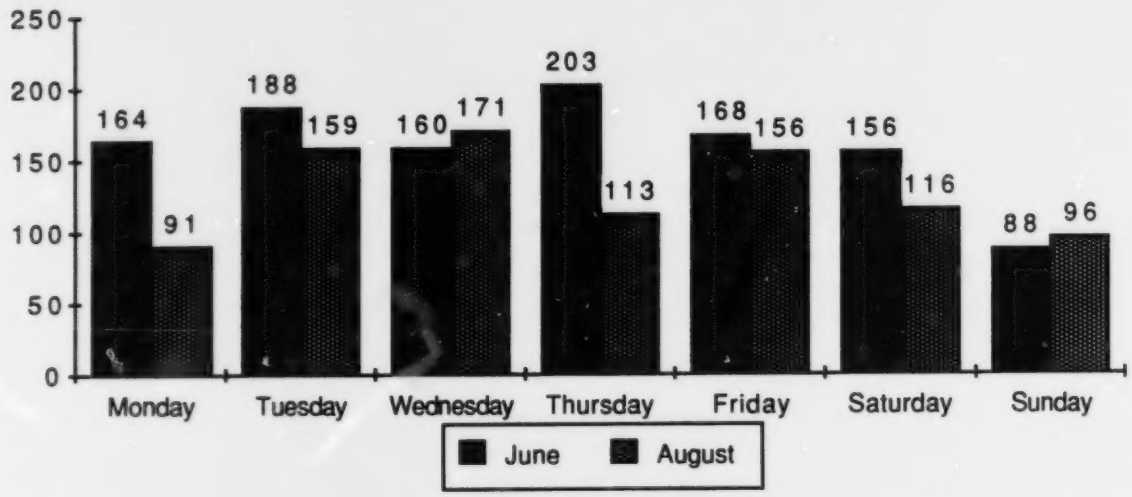
Chart 5.5



Few generalizations are warranted by these observations--later hours appear to be busier than earlier hours, although this trend is evident only in stroll 1, as we saw in Charts 5.1 and 5.2 above. In the next chart we summed the total number of prostitute counts for the five hour periods to give a more simplified estimate of daily variation, again for June and August. This is not an estimate of prostitutes per se, but total counts over the shift which is an indication of the relative amount of street activity. Looking at the two months separately, the pattern of activity in June was different than what we observed in August. The June figures were consistently higher than those found in August.

Chart 5.6

Prostitution Counts in June and August, 8:00 PM to 1:00 AM, All Strolls

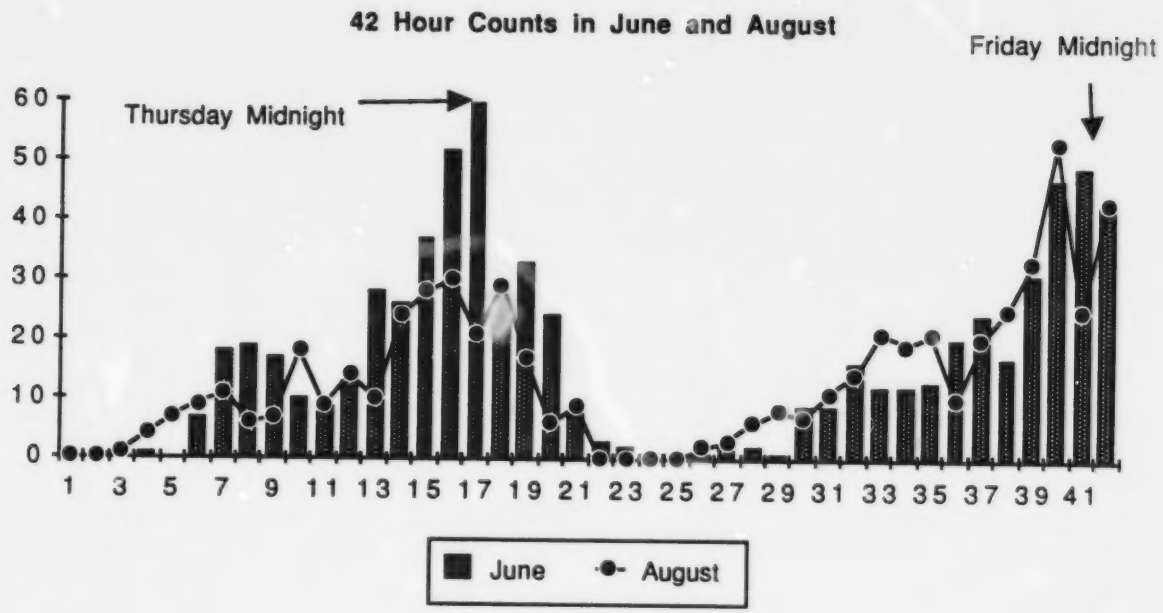


Looking at the combined figures in Chart 5.6, if we compare Saturday, Sunday and Monday to the rest of the week, there appears to be relatively less activity on these evenings, particularly on Sunday. However, it would be erroneous to characterize the midweek as a heightened "plateau" of activity since there is significant variability during the Tuesday to Friday stretch with peaks falling on different days in different months. Many of the prostitutes advised us that they took off Sundays and some reserved Saturday nights for their pimps. There is also evidence that many of the gay hustlers attended the drag party at one of the gay bars on Saturday nights. Motives aside, changes in the numbers may simply reflect a decline on the demand side--fewer clients. It was our impression that Sunday nights in particular were "dead" from the point of view of vehicular traffic.

3. Variations Over the Hours of the Day

The estimates of prostitutes presented to this point have been confined to the evening trade. When we first undertook the research we were surprised to see female hookers walking the main stroll before 11:00 AM. And while most of our rounds were completed by 1:00 AM the following morning, the main strolls remained busy after we left them. The following chart reports the results of our two forty-two hour observational periods in June and August. These periods started at 8:00 AM Thursday and continued until 2:00 AM Saturday (yielding the 42 hour data points shown in the following chart).

Chart 5.7



This chart suggests that there is a substantial daylight trade which is evident even before 1:00 PM (data points number 6 Thursday and number 30 Friday). In the afternoon up to twenty prostitutes could be counted. The pattern during the daytime suggests that there is demand for sexual services by men in mid-afternoon, especially at 2:00-4:00 PM (over 15 women each hour in June). Although confined almost exclusively to the main stroll, this is the sort of hooking which most of the office workers would discover inadvertently during their lunch breaks. However, from what we observed there is little evidence of tension between the prostitutes and the office workers, the former making a point of being as unobtrusive as possible with passing pedestrian traffic. We also observed a couple of the working women helping school children negotiating the vehicular traffic across First Street to and from Chinatown.

The second point suggested by Chart 5.7 is that the trade continues to be quite active late at night: there are almost as many prostitutes counted at 3:00 AM as there are at 8:00 PM, although after midnight the numbers decline. While we have heard that in Toronto the numbers of persons working climbs in the early hours after the Vice Squad shift ends, obviously this is not the pattern in Calgary. Again, we would suggest that the patterns observed here are largely dictated by client demand.

4. Seasonal Variations

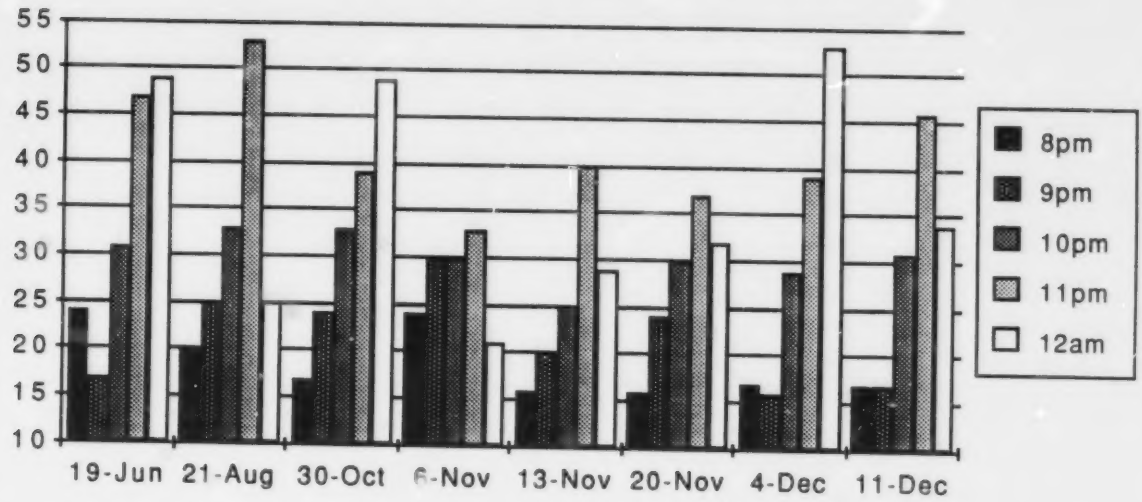
In the two previous charts we have already seen some evidence of changes between June and August. Generally, they suggest that the overall street counts

were lower in August, as were the weekly peaks of activity. There were 1125 counts of prostitutes made in the 8:00 PM - 1:00 AM period over the seven days in June. The comparable period in August recorded 902 observations. For the forty-two hour sequence, June yielded 701 counts, while August yielded 581. Does this suggest that fewer prostitutes are available to work or that client demand slackens? Obviously these two factors are related. To determine whether there were changes in the supply side, one can examine the peak points in the counts since these are better estimates of the maximum number of workers in the city on any one night than the aggregates of prostitutes times hours. Chart 5.8 suggests that the peaks in counts were comparable in June and August, even thought the total number of hours of prostitutes on view varied as Chart 5.7 illustrates (contrast the peaks at hours number 40 and 41--Fridays at 11:00 and midnight in the June and August counts--with the trends at other times of the day). The same number of persons appear to be present at both points in time, though the number of hours on view varied significantly.

Chart 5.8 suggests a demand interpretation. In addition to June and August, it compares the number of counts on Friday nights over six other points in time between June and December. What it reveals is that there seem to be comparable numbers of individuals working at peak times of business. The maximum hourly Friday count in October is as high as that in June (n=47 v 49), and December's peak is as great as August's (n=53). Only November appears to suggest a real decline in the counts (i.e. in the number of persons working), with peaks of 33, 40 and 37. This represents a drop of about one-quarter in the maximum number of persons counted. Consequently, we are inclined to conclude that the change in the number of hours in August (versus November) was a decline in demand, not in the number of prostitutes in the city. This could be attributed to the month being a major vacation period of city workers and businesses.

Chart 5.8

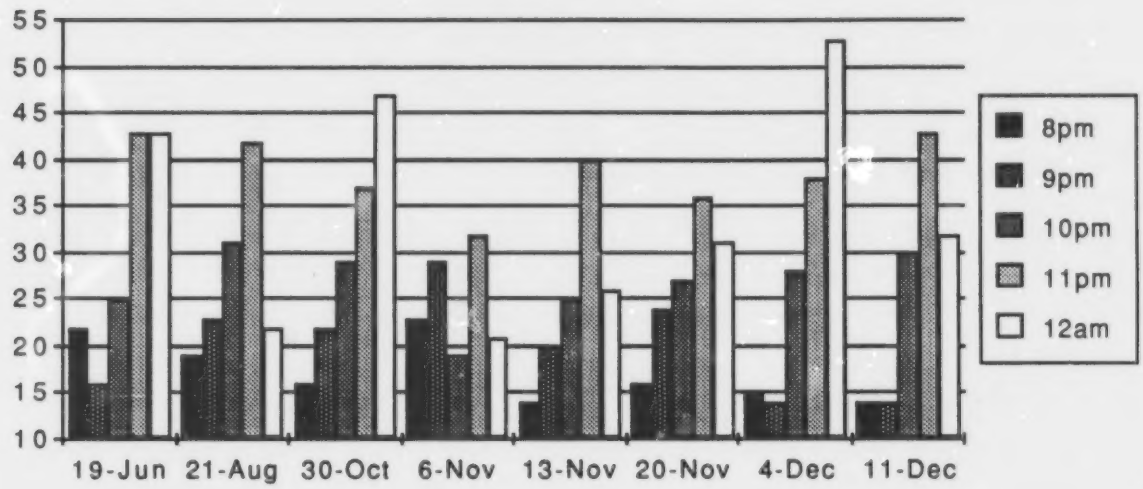
Prostitution Counts, Fridays, June-December
8 pm to Midnight



In the fall, we noted from casual observations that there was a substantial decline in street activity. The fall counts were initiated to document this. We are unclear as to why the decline occurred. The weather throughout the fall was unusually mild. By contrast, December 11 was bitterly cold, yet the numbers do not suggest that weather kept the prostitutes off the street on that night. As can be inferred from the next chart, the female-only data substantiate the pattern of high, late-night counts.

Chart 5.9

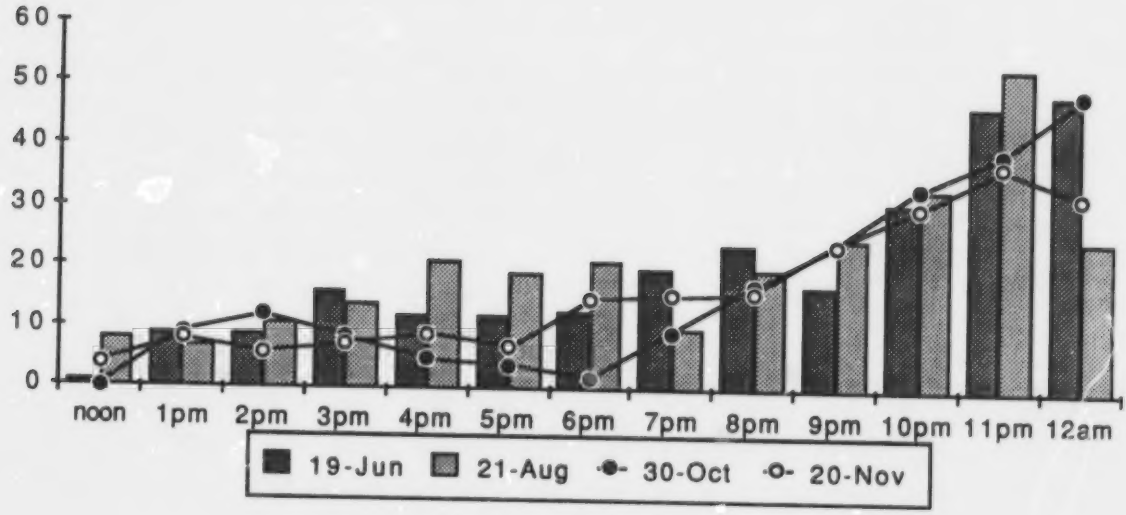
Prostitution Counts, Fridays, June-December
8 pm to 1 am Without Males



Changes were also evident when we compared the mid-day patterns. These indicate that during the fall, daytime activities declined. In October and November we made observations at noon, one, two, four, five and six, and eight to one. We estimated the counts at three and seven by averaging the adjacent hours. In the next chart we compare the summer and fall patterns which show some decline in the mid-day activity in the 3:00 PM to 6:00 PM period.

Chart 5.10

Prostitute Counts, All Strolls
Fridays in June, August, October and November



While the observations from 8:00 PM onwards suggest that the levels between summer and fall are similar, clearly the mid-day levels between three and six are about half the levels observed in earlier periods. There is also good evidence to suggest that the male stroll changes fairly dramatically between summer and fall. If we compare the total number of counts made over the eight Friday evenings we find there are totals of nineteen over the five hours on both June 19 and August 21. By contrast, October 30 had ten. The November numbers were six, five and five; and six and twelve in December. These are aggregated counts for entire evenings. However the same pattern emerges when we look at the peak numbers--i.e. the largest number of hustlers recorded at any one time during a day. In June and August the maximum number was the same: eleven. During the six Friday night counts during the fall, the maximum number wavered between three and four. Clearly, the activity on stroll 2 is seasonal, seeing much more activity during the summer.

5. The August Sting and the August Count

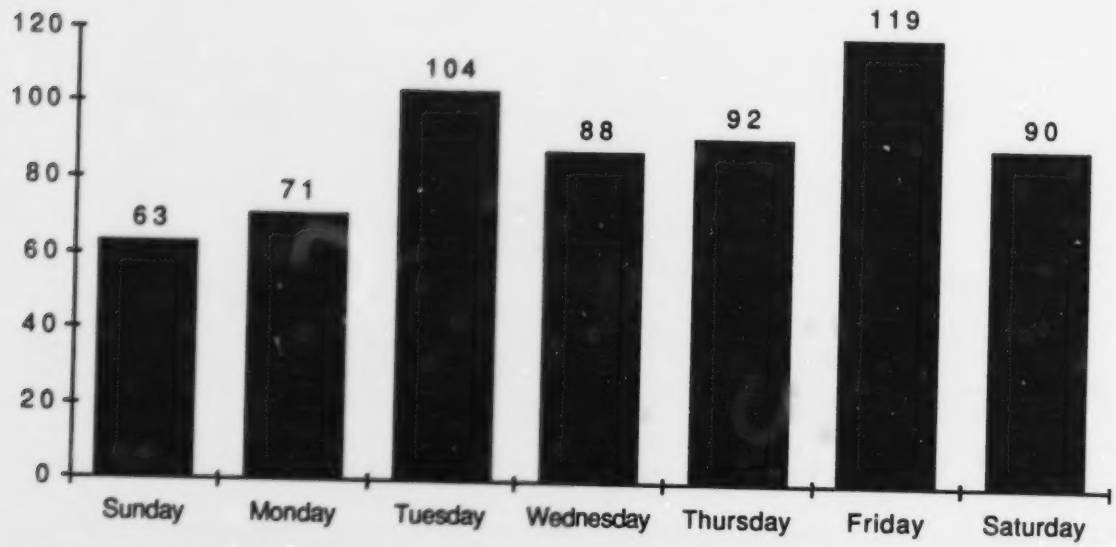
During the August 16-22 count period, the police mounted a two-day undercover sting operation only a month after the appeal counts upheld the constitutional validity of the anti-soliciting law. Tuesday was devoted to the arrest of prostitutes, and Wednesday to the male customers. Both operations were confined to the main stroll. On Tuesday evening thirty women were arrested

between 8:00 PM and 3:00 AM under s. 195.1 as a result of accepting offers from undercover policemen in unmarked cars. All were processed in police vans, held in a bus behind the J.J. Bolen building, and only released on a recognizance after all the arrests had been made. On Wednesday evening, undercover female officers played the prostitute role, and engaged in conversations with interested men. These conversations were tape recorded, and the men were pulled over by squad cars several blocks from the decoys and were summonsed under s. 195.1. The Wednesday operation was short-lived when a pimp noticed that customers were being pulled over. Not recognizing the new faces on the stroll, he gathered several hookers together to physically confront the two female undercover officers. As a result of the ensuing imbroglio, he received three counts of obstructing justice, one of the prostitutes was charged with causing a disturbance, and the police called off the operation after only three customer arrests.

Since our count and the sting operations coincided, we have a quasi-experimental study of their immediate impact on female hookers. How substantial an effect did the operations have on the counts on Tuesday as well as the rest of the week? Our observations suggest that the impact on the numbers working was probably quite modest. Certainly, on the Tuesday evening the counts declined significantly at 11:00 PM and midnight to sixteen and twenty-two from the 10:00 PM peak of twenty-seven--making this one of the only dates where the counts peaked at 10:00 PM. However, the numbers began to recover by Friday.

Chart 5.11

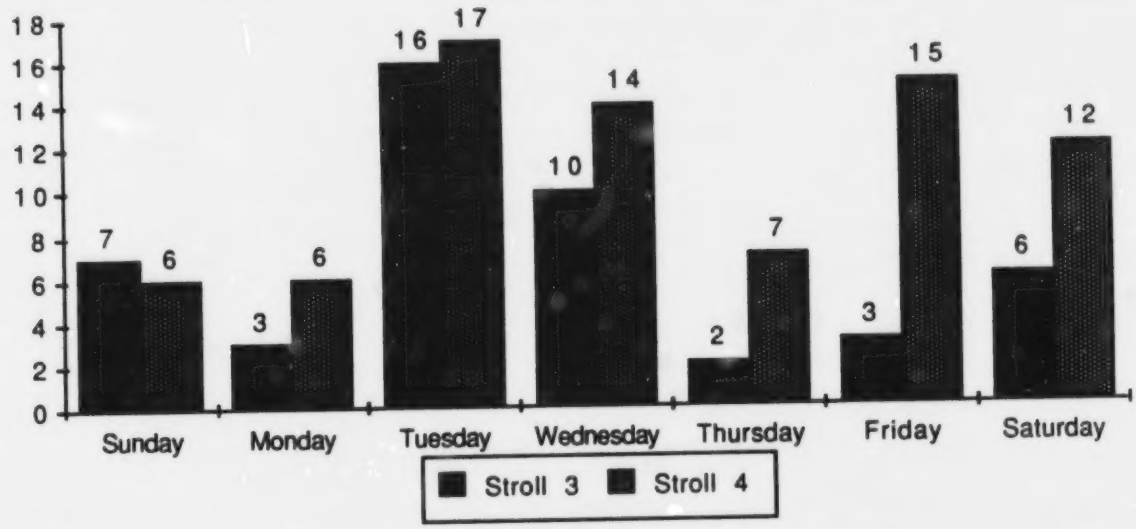
Counts from Stroll 1 in Week of August Sting



There is also evidence that at least some of those working the main stroll moved to the other female strolls (three and four), for these were noticeably busier than usual on Tuesday and Wednesday evening--indeed busier on these days than on any other evening. This increase was probably created by the presence of two to four more hookers than were usually seen on the strolls (see Chart 5.12).

Chart 5.12

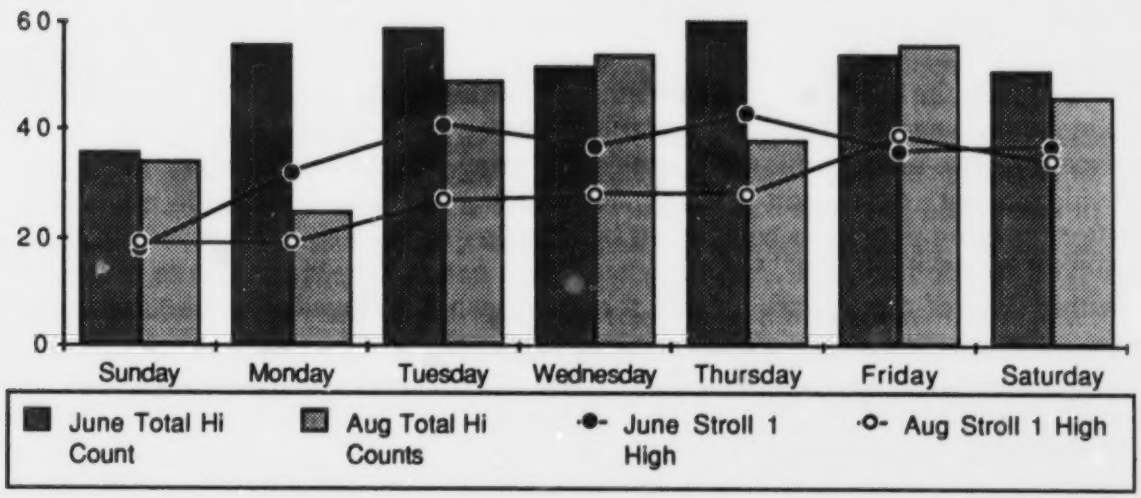
Counts from Strolls 3 and 4 in Week of August Sting



However, the trend on Wednesday and Friday suggests some recovery in the patterns as can be seen in Charts 5.5 and 5.6 above (which report aggregated counts from all strolls for each hour). This measurement suggests evidence of marked truncation in the peaks on Thursday. Besides comparing the total number of prostitutes counted (repeatedly) over a five hour shift, another indication of the impact of the sting is to look at the peak numbers of hookers occurring at any time over the shift. This would be a better estimate of the actual maximum number of prostitutes working on any evening. In the following chart we report these figures for the main and the combined strolls, and compare June and August. The sting was confined to the main stroll, which is shown in Chart 5.13 as a white circle for August, and a black dat for June.

Chart 5.13

Highest Number of Prostitutes Per Evening
For All Strolls and For Stroll One in June and August



The Sunday counts for stroll 1 are equivalent, although Monday shows a substantial difference--which continues for Tuesday, Wednesday and Thursday. On Friday and Saturday the counts for stroll 1 become equivalent again. If we grant that the gradual removal of thirty prostitutes would depress the Tuesday count (although we report the highest number from earlier in the evening, i.e. 10:00 PM), then it is probably a fair inference that similar levels from Wednesday and Thursday are likewise lower than would otherwise be expected. Also, we would normally expect the midweek levels to be higher than the Saturday levels, although in this week they are lower. If we assume that June represents the benchmark, then in stroll 1 there appears to have been a thirty percent (Wednesday) to thirty-five percent (Thursday) decline in the number of women working. However, the recovery of the numbers by the weekend entirely closes the gap between the June and August counts.

What do the observations suggest? First, there is no evidence of a step-wise decline in soliciting, except for that observed due to an incapacitation of the hookers on the evening of the arrest. Unlike other jurisdictions, the prostitutes are not held overnight in custody, and the police have not tried to take individuals to bail court to obtain a restraining order preventing them in advance of trial from frequenting the strolls. Consequently, when released, the counts suggest a gradual recovery in the numbers witnessed as early as Wednesday. We infer that a substantial proportion of those counted at the 10:00 PM peak on Tuesday were later arrested that night since the sting operation continued until about 2:00 AM, yet similar numbers were out the following evening. The confrontation between police and the

prostitutes on the Wednesday may have warned off some of the prostitutes resulting in the lower numbers on Thursday--a day usually among the busiest of the week. Consequently, the Thursday pattern may be evidence of one of two factors: deterrence of some individuals as a result of arrest, or avoidance of trouble by those who heard about or saw the confrontation with the police on Wednesday. This latter possibility is the less credible since we usually expect higher levels of activity midweek. As for the deterrence/avoidance interpretations, avoidance was certainly indicated in the evidence of displacement to other strolls. It is extremely difficult to choose between the two interpretations on the basis of the evidence gathered--except for the main point: the effects of the sting, if any, were modest. There is no evidence that anyone quit working. The numbers of women working immediately after the sting may have been down by about a dozen--a couple of these may have moved to another stroll, but the changes in conduct appear to have evaporated within days of the operation. This does not mean the operation was unsuccessful--the court appearances may be viewed more gravely by the hookers, especially those who had only started working. Our point is that the sting operation on its own appears to depress the trade only in the most superficial way--by incapacitating individuals on the night of the operation.

The Interviews

In order to learn how prostitutes reacted to the implementation of the law, we undertook a program of interviewing during the summer of 1987. The interviews were conducted by research assistants who spent the summer on the streets making contacts, getting known, and trying to establish the confidence of the prostitutes. We spoke only to persons currently in the prostitution business, and only contacted them personally by approaching them on the street. We did not use any intermediaries to make contact (such as the police, social workers, retired prostitutes, or prostitute advocacy groups). The women were interviewed by two male researchers, the men by a female researcher. Interviews were conducted wherever the subjects felt comfortable. Some were conducted in a local strip club, although the majority were in cafés and in researchers' automobiles parked around the strolls. The interviews were entirely voluntary and the subjects were assured of confidentiality. Approximately half were tape-recorded. If subjects were too busy to talk with us when approached, the researchers arranged to make appointments during slower periods when the subjects had more time. All the interviews were conducted between June and August, 1987.

How reliable was our sampling? In the case of the hustlers virtually all of those working on the stroll during the summer were interviewed. In the case of the hookers, our strategy was to focus our attention on the streets, to maintain a virtually continuous presence over the summer in order to gather the views of those most concerned about s. 195.1 (as opposed to the escort workers and as opposed to

those known to social agencies seeking counselling). On the street our problem was self-selection--how do you control for a bias in favour of women who were cooperative? Our strategy was to interview as many active prostitutes as possible in order to minimize any bias created by self-selection. In our view we could achieve reliability by sampling a number large enough to approach the total population observed at any one time, thereby approximating the population parameters, and capturing the variability in which we were interested. By summer's end, we had interviewed 51 women and 19 men. In the case of the men, this was more than we ever saw on any one occasion, and in the case of the women, the figure of 51 was more than we saw on most of our counts, and certainly constituted the plurality of the women working regularly. In the case of women there might be some bias in our choice of location: for reasons of security, all our interviews were gathered on the main stroll. No interviews were gathered on the 3rd and 4th stroll areas, although we frequently saw faces familiar from the main stroll in these other locations (though those who worked habitually on the 3rd and 4th strolls were never seen on the main stroll). The latter were never populated by more than three to five women. Also, the pimps appeared more evident in these locations, especially in restaurants in the area of the National Hotel (stroll 4). Consequently, our energies were devoted where most of the action was, and where security was less contentious. What did we learn?

The Interviewees: Demographic and Background Characteristics

Age. The mean age of the hookers was 22.8, and for hustlers 21.1. The median age for men was 20 and for women was 22.[1] However, this overestimates the age of most subjects. As the next chart shows, the distributions of age are bimodal, and the majority of respondents appear towards the younger end of the continuum. The means are pulled up by the small numbers of older individuals. Lautt's earlier study found the majority of women to be in the 16 to 20 year age range; 42% of her females were in this range, versus 35% in our sample.[2] The 21-25 year range constituted 19.4% of her sample, versus 31% in our sample. Hence, the Calgary sample was somewhat older than her prairie sample.

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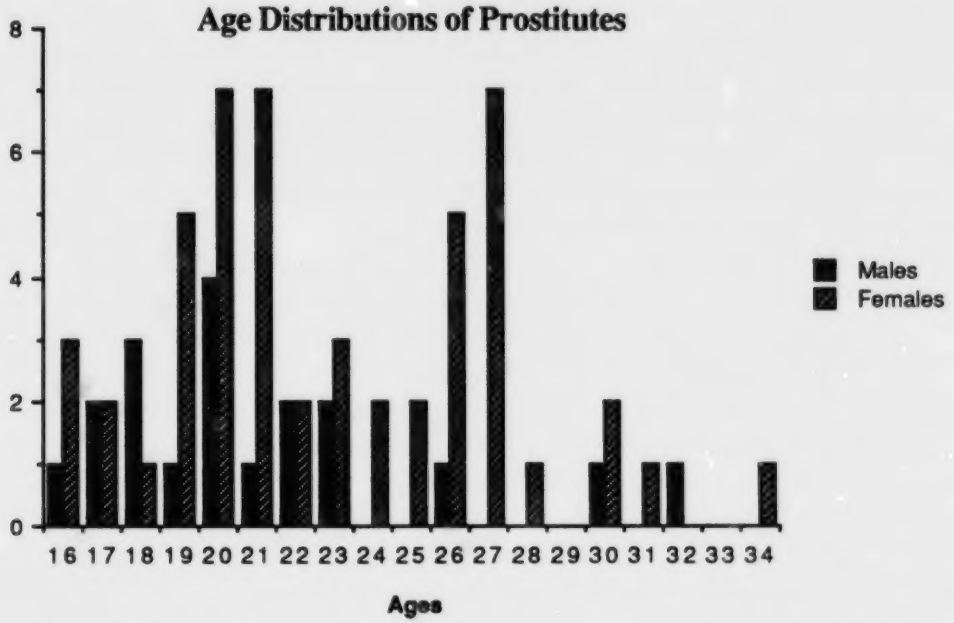
[1] The median minimizes the bias which arises from skewed distributions, i.e. small numbers of extreme values at either end of the distribution.

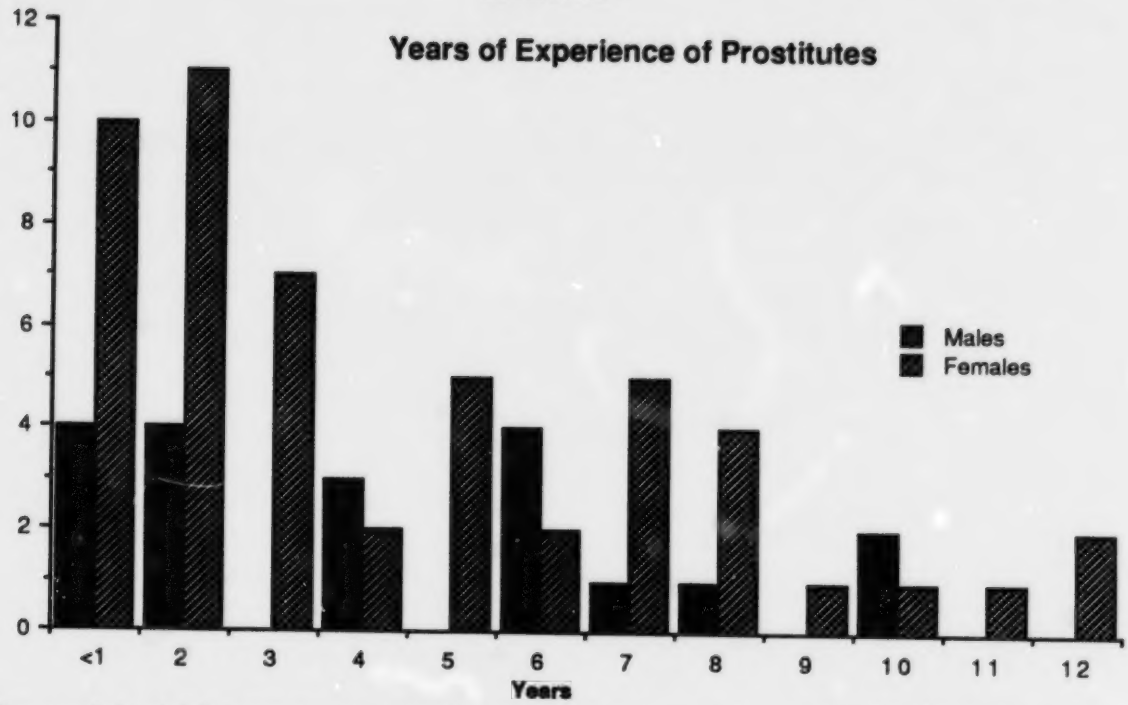
[2] Melanie Lautt, T.A.P. Towards an Awareness of Prostitution. A Study of Prostitution in the Prairies, Ottawa: Department of Justice, 1984, p. 41.

Chart 5.14



Experience. The average number of years of experience was almost identical for the hustlers and hookers: 4.07 years for men, 4.08 for the women. Over forty percent had been working for two years or less, and twenty percent for less than a year. We interviewed several people who had only started hooking in the weeks prior to the study, including one individual who vowed to quit immediately after the interview upon hearing the exact wording of the law (and getting busfare home to Red Deer--which was in any case her motive in soliciting in Calgary en route from Vancouver). Although the mean average was four years, the skewed distribution suggests that most of those working had relatively short careers in the business. How can one reconcile the youth of most participants and the four year mean of their experience?

Chart 5.15



The model which best reconciles the age and the experience distributions suggests that many young people enter the life, that the attrition level is high although far from complete, and that we consequently find a large number of young participants with little experience alongside a smaller number of older individuals with considerable experience.

Domestic Situation. We asked the subjects about their living circumstances ("who do you live with?") as well as whether they had any children. Of the nineteen men, ten reported living with other men (53%), most of whom were hustlers or former hustlers, three with girlfriends (16%), three with "family" (16%--in one case a mother, in another an uncle who was a former hustler, and in one case with both parents). Two lived alone (10%) and the last was unknown (5%). In contrast, twenty-three out of the fifty-one women reported living alone (45%),[1] 18 with pimps/boyfriends/husbands (35%), 5 with their children (9%) and 1 with her mother (and her mother's pimp). The 51 women had 23 children (or some .44 each--Lautt had found more children, about .66 per person) ; only one of the men had any children--twins in the care of his former wife, although two of the men were expectant fathers. As for marriage, none of the hustlers was currently married. One was divorced, and three were living common law. Among the women, 42 reported not being married (83%), 3 reported that they were (6%), and

[1] Lautt found about 66%, 1984, p. 43.

6 reported being divorced (12%). By comparison, Lautt found 61% reporting single status and 16% were divorced or separated. On the whole, Lautt's subjects appear to have been younger, more fertile and more likely both to have been married and divorced.

Education and Employment. We inquired about the highest grade ever completed in the subject's formal education. Contrary to what we had expected, the educational attainment of the respondents was relatively high. Hookers reported completing an average of 11.4 years, while hustlers reported 10.4. Half of the women had completed grade twelve and/or some post-secondary education. Lautt found about one-third fell into this category.[1] However, when we inquired about the sorts of other job experience which they had, the jobs were overwhelmingly marginal areas of labour requiring little formal skill: sales clerks, waitresses, receptionists, flag girls, camp cooks, gas jockeys, secretarial work, orderlies, nurse's aids, cashiers, carnies and hairdressers. The men reported similar experience: dishwashers, busboys, short order cooks, shippers, laborers, telephone sales clerks and the like. Almost without exception, the previous work experience was unskilled service sector work or casual labour. Even so, this is probably characteristic of all young people with summer, and part time jobs, and of people who drop out of school without specific job skills.

Among the women, many expressed higher aspirations for future employment: respondents indicated interest in airline stewardess work, several mentioned an interest in opening hairdressing businesses or other owner-operated businesses, and journalism was mentioned. Also, several had either attended or were currently attending university and college with prospects of more gainful employment in the future. Those with post-secondary schooling experience showed an inclination towards business and management training.

Race. We did not pay any attention to the racial background of those interviewed since the interviewers determined that seeking such information in a multi-cultural society would contradict federal government policies and this would itself tend to reinforce racial stereotypes. We estimate from a post hoc examination of the records that about 15% of the main stroll women were Black, about 4% Native and the balance White. The men were all White. This was in marked contrast to our observations in Winnipeg and Regina where there was a much greater Native sector involved in female prostitution. Lautt's prairie sample was 47% Native. The data for prostitutes who were arrested in Calgary in 1986 and 1987 indicated that 17% were Black, 3% were Native, and the rest were White--which bears to strong resemblance to our own estimates from the interviews.

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[1] ibid. p.42

Money, Abuse, and Initiation to Prostitution. Although we were primarily interested in the impact of C-49 on prostitutes, we also inquired into some of the circumstances associated with initiation into "the life." Our data here are sketchy, both because subjects were sometimes reluctant to discuss this, and because it was ancillary to our principal interests in interviewing them. Interest in the foundations of the business of prostitution have not waned through periods of law reform in this area. Even so, there has been little understanding of motivation from the perspective of the protagonists. A century ago progressive governments sought to curtail prostitution in the interests of ending white slavery.[1] In nineteenth century rhetoric, hookers were conceptualized as slaves who were forced into sexual servitude by foreigners. Today, some theorists conceptualize prostitutes as victims of childhood incest, and physical and sexual abuse who wander into the business as a result of their unfortunate origins. The rhetoric in both centuries has characterized the hooker as a passive victim who cannot be held responsible for entering the business, since neither slaves nor abusees can choose their lot. As one of the spokespersons from Calgary Elizabeth Fry Society suggested, the public has a strong need to believe that prostitutes do not do their work voluntarily. Ironically, the social origins which make legislators view the life dimly, and which provoke sympathy from liberal sectors of society, do not function as defences or excuses for those caught up in the apparatus of control. In this section, we were interested in accounts subjects gave for entering the business as well as their reports of abuse associated with it, since the former throw light on forces that facilitate our understanding of entry into prostitution, and since the latter alert us to some of the grave consequences of joining.

Respondents frequently gave several reasons for becoming prostitutes. The most common rationale for having started was to earn money--this reason was given by 39 out of the 51 women (77%) and 16 out of 19 men (84%). Unfortunately, this explanation could be given by most people who find paid employment of any kind. However, this was frequently described as "easy money", although it was also learned that the returns to prostitution in Calgary have declined dramatically over the past eight years with the fall in the petroleum market. During the oil boom when rig workers and petroleum executives were returning to Calgary for rest and recreation between weeks of work on the northern rigs, hookers could easily pull $1000 a night; in 1987, $150 would have been quite respectable. Aside from money, associates/friends appear as equally relevant in the explanations of coming out. Among the women, 39% reported that close friends or family members who were working in the area prior to their association with the business influenced them to join. Eight (16%) reported that they had left home "early" and were required to find some sort of work. Five (9%) mentioned their involvement

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[1] John McLaren, "White Slavers: The Reform of Canada's Prostitution Laws and Patterns of Enforcement, 1900-1920," Criminal Justice History, Vol. 9, 1988, pp. 53-119.

with habit forming drugs. Four (7%) mentioned being abused as children, and two (4%) became desperate for money when they became pregnant. Among the men, 5 mentioned associations with friends/family which influenced them (26%), 9 mentioned leaving home early (47%), three mentioned drugs (16%) and 1 cited sexual abuse as a child (5%). It is virtually impossible to determine from our interviews the extent to which self reports are actually explanations of behaviour as opposed to post hoc rationalizations.

To what extent is the theory that prostitution is related to incest and child abuse borne out by our data? Although the Robin Badgley committee reported no greater levels of sexual abuse among juvenile prostitutes than were found in the population at large,[1] in a recent study Chris Bagley and Loretta Young reported very high levels among former female prostitutes in Calgary and Edmonton.[2] In addition to asking subjects about how they got started, we subsequently inquired about both physical and sexual abuse ("Have you ever been the victim of physical or sexual violence?") and probed them as to possible agents involved in the most traumatic experience ("Who have you had the most traumatic experience with? dates, police, pimps, parents, a spouse, a relative, family friend, other?"). Very few individuals reported no bad experiences--only some 8 out of 51 women (16%) and 5 of the 19 men (26%). However, when we compare the kind of violence and threats of violence with the source, our findings are more consistent with those of Badgley.

Table 5.1. Frequencies of Reported Victimization by Type, Gender and Agent

	Female Victims	Male Victims
Type of Abuse:		
Sexual Abuse	10	6
Physical Abuse	18	6
Both	12	1
Unspecified	3	0
No Reported Abuse	8	6
Totals	51	19
Agents of Abuse:		
Father, Stepfather or Adult	2	3
Dates	21	3
Pimps	4	1
Dates and pimps	11	0

[1] Robin Badgley, Sexual Offenses Against Children, Ottawa: Supply and Services.

[2] Chris Bagley and Loretta Young, "Juvenile Prostitution and Child Sexual Abuse: A Controlled Study," Canadian Journal of Community Mental Health, Vol. 6, No. 1, 1987, pp. 5-26.

Dates, pimps, and father	1	1
Dates and father	1	0
Police	0	2
Strangers	0	1
Police and Strangers	0	1
Dates and police	2	0
Date and Stranger	0	2
unspecified	1	0
none	8	5
Totals	51	19

About half the hookers (25) were victims of sexual, or sexual and physical violence (assuming the unspecified reports were sexual in nature), and just over a third of the hustlers reported similarly. However, only four women and four men identified fathers, stepfathers or adult friends of the family or other relatives as sources of the abuse. The major sources of abuse were dates and pimps for the women (accounting for over 70% of the victims), and dates and strangers ("breeders" or "fag bashers") for the men (accounting for 62% of the victims). This suggests that the prostitutes face very high levels of aggression, but the street appears a more important source of victimization than the home. Also, the numbers cite victims, not events. Many victims had been raped and/or beaten up repeatedly.

We were astounded by the recurrent accounts of hookers and hustlers being confronted by armed assailants, stabbed, threatened with death, beaten up and robbed. During 1986 two female hookers from Calgary were found murdered in rural Alberta, their bodies disposed of in the country. The interviews suggest that the gravest source of aggression comes from their customers. For example, in Calgary in 1986 a Vietnamese immigrant raped six or seven prostitutes at knife point before being entrapped and mauled by their pimps and turned over to the police. In fact, Calgary police have successfully prosecuted several customers for sexual assault. However, the women also face appalling physical abuse from their pimps or boyfriends. The hustlers rarely had problems with pimps, although the presence of young male gangs of "fag bashers" was a not infrequent worry on the stroll. In 1986 one young hustler was severely beaten near the gay stroll. What these responses indicate is a serious level of interpersonal aggression associated with the subculture of street prostitutes. In the next chapter, we raise a somewhat different question--whether the levels of violence have changed as a result of the law.

To sum up this section, we found high levels of aggression and victimization in the backgrounds of those we interviewed. However, the pattern which emerged from our interviews suggests that previous sexual or physical abuse of the

respondents as children or adolescents would not appear to be a systematic element in their backgrounds. We turn now to more legally related elements in the backgrounds of respondents: specifically, their record of previous contact with the law, and their knowledge of it.

Criminal Record. How serious were the criminal records of the seventy persons interviewed? The accompanying tables show the arrest records as reported to us during the interviews. The results for men and women are represented separately. The pictures which emerge are fairly complex. We shall deal first with the numbers of persons versus the number of charges, and second with the areas of offence. Among women 34 had faced at least one charge (67%). Sixteen faced multiple counts on the same offence or on different charges (31%). For the purpose of this report, we counted juvenile judgments as criminal offences. There were 80 charges reported in all. However, this figure actually underestimates the criminal involvement of the women, since three subjects refused to detail their records, which we inferred from their 17.5 years of aggregate experience were extensive. We included them in the number for persons convicted and for persons facing multiple charges. If we estimate that each of the three had 5 to 10 charges, then the total number of charges for all the women is probably in the area of 85-100.

What were the outcomes of prosecution? As is typical in criminological studies, most of the persons charged were convicted of something, but among the charges themselves, the levels of attrition were quite high. Specifically, 24 out of the 34 persons charged were convicted of at least one charge (71%), though only 38 of the 80 charges succeeded (48%), although the outcome in 4 other cases was pending. What happened to the charges? Fifteen found-in charges and ten soliciting charges were dropped--about one third of the total. Many individuals had charges thrown out or dropped on the basis of constitutional challenges to the federal soliciting law and the Calgary city by-law. Some cases involved juveniles who were dealt with under the provincial child welfare law. Other charges appear to have been dropped for evidentiary reasons, and outcomes were not recorded when the accused decided to skip town rather than appear in court--this occurred in 3 instances, from which we infer that 3 further bench warrants were issued for failure to appear as promised on a recognizance given under the Bail Reform Act. This would further inflate the overall number of charges. Since bench warrants are not always issued on a Canada-wide basis, Calgary police do not always return an

Table 5.2. Criminal Records of Female Subjects

	Persons Charged	No. of Main Charges	Other Charges	Totals By Charge Type
Soliciting, including By-Law	18	39	21	39 (includes 6 by-law)
Bawdy House Charges	3 (+1)+	3	0	18
Theft, Shoplifting, B & Es	6 (+1)	7	0	8
Narcotics Offences	2 (+2)	2	1	4
Impaired Driving	1 (+1)	1	0	2
Assault	1	1	0	1
Petty Trespass	(+1)	1	-	1
Public Mischief (Intoxication)	(+2)	2	-	2
Concealed Weapon	(+1)	1	-	1
Fail to Appear	(+1)	1	-	1
Other				3
No Cooperation	3	Numerous*	-	-

Total Persons =	51
Total Number of Charges =	80
Total Persons Charged =	34
Persons With No Charges =	17
Persons with Different Charges/ Multiple Counts =	16

*Ss had 17.5 yrs experience in total

+numbers in brackets indicate persons already counted in other charge category.

accused to the original jurisdiction despite learning of an outstanding warrant issued elsewhere.

As for areas of arrest, the single major source of offence was prostitution related, soliciting and bawdy house charges accounting for 57 out of the 80 charges (71%). The next major areas were theft (10%) and narcotics offences (5%). For the purpose of simplifying offence areas, we lumped together reports of "theft over" and "theft under," shoplifting, fraudulent use of credit cards, transportation fraud, possession of stolen property and breaking and entry (there were no reported robberies). The narcotics offences were all possession related.

The picture which emerges for the hustlers is quite different. We found the men much more forthcoming about their records--there were no refusals to cooperate. Fifteen out of our nineteen subjects had faced at least one charge (79%), twelve faced multiple charges (63%), and fifty-four charges were reported in all. As for convictions, virtually everyone charged was convicted. More specifically, thirteen of the subjects were convicted of at least one offence (87% of those charged), and charges succeeded in 26 out of the 54 instances laid (48%). However, the outcome in 5 cases was still pending, and in 5 others the individuals had skipped

Table 5.3. Criminal Records of Male Subjects

	Persons Charged	No. of Main Charges	Other Charges	Totals by Charge Type
Soliciting (no by-law)	7	8	16	8
Counselling Gross Indecency	(+ 1)*			1
Theft, Shoplifting, B & E	5 (+ 7)	12	5	22
Narcotics Offences	2 (+ 3)	8	1	11
Assault	(+3)			4
Public Mischief (Disturbance)	(+1)			1
Poss. Dangerous Weapon	1	1	3	2
Concealed Weapon	(+1)			1
Obstruct Justice	(+1)			1
Breach Probation	(+2)			2
Hwy Traffic (Liquor in Car)	(+1)			1

Total Persons =	19
Total Number of Charges=	54
Total Persons Charged =	15
Persons With No Charges =	4
Persons with Different Charges or Multiple Counts=	13

*numbers in brackets indicate persons already counted in other charge category.

town before the date of a court appearance. Consequently, the 13 individuals with a total of 26 convictions are probably an underestimate both of the number of persons who will ultimately be convicted, and of the total number of charges for which they will be convicted.

There was a significant difference in the area of charges. While women faced more charges for prostitution than for anything else, most of the charges faced by men were for theft-related activities. Twenty-two of the fifty-four charges were in this category (41%), followed by eleven charges involving narcotics (20%), and nine involving prostitution (17%). Clearly, the backgrounds of the men are different from the women; even aside from the lack of police sweeps targeting the male stroll, prostitution would not seem to be the major factor bringing them into confrontation with the law, as in the case with women. The trouble the women find themselves in seems to follow after the choice to work as prostitutes on the street, while the delinquent activities in the male careers appear independent of this choice.

Also, the overall levels of delinquency of the men appear to be much higher. The sample of 19 individuals faced 54 charges (or 2.8 each), and 13 out of 19 individuals were convicted (68%). Also, most individuals faced multiple charges. The comparable figure for women is 1.56 charges each, and even if we estimate the hookers' charges at 100 to control for the three non-cooperatives, we still attain a figure of 2 charges each, which is 30% lower than that for the men. Also, only

about half of the women charged faced multiple counts and only 24 out of 51 of the women were ever convicted (about 48%) . Finally, among the women one third never reported any prior arrests, while among men the figure is only about one-fifth.

These findings are not that surprising when we consider that young men are the most active demographic sector of society when it comes to crime and delinquency. What is surprising is that those hustlers who decide to work the streets are already seriously involved with a delinquent subculture. This suggests that an explanation of why young people enter street prostitution--such as the sexual abuse theory--might miss the point if it failed to address the other acts of delinquency which, in the case of young men, appear to be a more serious source of arrest and conviction. One plausible explanation is that abuse creates incentives to leave home early--as would family rejection of a homosexual identity. One on the streets, theft and hustling present themselves as sources of occasional or adaptational crime, though gender socialization might make young females in such a predicament less "diversified" in the avenues of income generation compared to their young male counterparts.

A second point. Any law reform which transferred control of prostitution out of the Criminal Code would affect men and women quite differently; it would remove the major source of stigma in the records of the former--soliciting and found-in offences--but would impact the records of the latter only marginally, since the major component of such records are non-prostitution charges.

Knowledge of the Law. In this final section we move to a rather more specific type of background knowledge. From the records of the respondents one might infer that the subjects had a fairly good grasp of the Criminal Code. However, we wanted to learn what sort of knowledge the respondents had about the existing federal legislation pertaining to street soliciting. We asked first, "What do you know about the current soliciting law? What does it make illegal?" We then asked, "Are you aware of the changes that came into effect at the start of last year?" We read a section of the law including the definition of a car as a public place. Finally, we asked for reactions to the law. Responses to the questions were so varied and open-ended that they were impossible to code systematically. One of our first interviewees reacted: "The law is the shits. It doesn't work anyways...If they say a car is a public place why can't we just walk up to a police car, jump in and say we want to warm up for a while?" Also, we heard numerous theories about what the meaning of the law was: "You can't go up to someone and say, '*do you want to go out? It's $80 for a lay*,' but if they say it you are not soliciting them." "You're not allowed to wave dates over to you, and not allowed to stand on the curb in some cities." "First, I ask them if they are a cop. As far as I know if they are a cop they

have to say so." "We're not allowed to stand on the streets...It's not only in a public place, it's anywhere."

Aside from these novel readings of the Code and the various opinions volunteered about parliament's wisdom in this area, there were some general features in the responses. First of all, the subjects overwhelmingly had a good understanding of the law whether they had been arrested or not, and knew generally that soliciting was illegal, at least formally. This was true whether or not they knew about the changes to s. 195.1. Only about 6 of the hookers (12%) and 4 of the hustlers (21%) reported that they did not know anything about the law, these being persons who had only recently begun to work. Second, most knew that the Calgary police were not making arrests of any of the hookers for soliciting during the spring and summer of 1987, so that the law was more a theoretical issue than a relevant fact of life. When we undertook the interviews in June of 1987, the law was not operating, having been declared unconstitutional by judges in both Calgary and Edmonton the previous September. Most of the prostitutes knew that the law had been "thrown out". Only in August did the police start to lay charges again after the court of appeal found the limits imposed by s. 195.1 constitutionally valid. So the "looseness" in their knowledge had some foundation in their experience. It was also evident that those in the business for a longer time were familiar with earlier court challenges involving the City of Calgary by-law which attempted to fine the women for soliciting. Some 500 tickets were issued by police in 1982 and 1983 before the law was declared ultra vires.

After the first 13 interviews, we added some questions to establish a finer measure of the subjects' knowledge of the implications of C-49. The fifty-seven subsequent subjects were asked: "Did you know that a car was a public place?" "Did you know that communicating for the purpose of selling sex was illegal?" "Did you know the law applies to customers as well as to prostitutes?" And, "do you know anything about the Calgary court case which challenged the law? Do you know the effect of this case?" The following table, based on all the subsample of fifty-seven subjects, suggests that knowledge of the law regarding communication was virtually universal, that knowledge of the customer's risks was well known, but that knowledge about the liability of talking in a car was weak, as was knowledge about the Calgary case which struck down the law from September 1986 to July of 1987. In both cases where knowledge was weak, the women nonetheless appeared better informed than the men.

Table 5.4. Knowledge of the Law

Number and Percentage of Subjects Showing Detailed Knowledge of S. 195.1				
	Car	Communication	Customers	Calgary Case
Males (18)	5 (28%)	17 (95%)	17 (95%)	2 (12%)
Females (39)	20 (51%)	38 (97%)	34 (87%)	22 (56%)
Combined (57)	25 (44%)	55 (96%)	51 (89%)	24 (42%)

A final question we asked in connection with the law probed the attitudes of the prostitutes towards prostitution: "Do working girls [or hustlers] think of themselves and their dates as law-breakers or criminals?" One woman thought prostitution was a petty crime, another said that she thought it was illegal but not criminal. However, the overwhelming majority thought otherwise. "Its life. Its the oldest profession." "We're all out here to make a living, we're not hurting any one." "I'm not breaking any laws. How is any girl with a grade twelve education supposed to get a job?" "Its a public service." The public service theme appeared frequently. "We're keeping rapists off the streets. Square girls won't do this, and we're willing to pay taxes on it." Another suggested similarly--"hookers are a release valve. Its a service, and its better than having men raping little girls." However, many of the women in particular were sensitive to the views of the dates. "The dates consider it wrong and worry about their wives discovering it." Another thought it was not a crime as much as "a sin for the dates." Also, because of the recent change to the law, "the dates are paranoid-scared by the law." Another hooker advised that with the new law "the dates view it as crime, although the regulars never admit this."

A similar picture emerges from the hustlers. "I don't feel I'm a criminal." "We're just trying to make a living." "We're just trying to survive." "We're just trying to make money." "Its just a job." "We just supply what people want." "We provide a service to people who have trouble meeting people." "We are neither lawbreakers nor criminals--its like bootlegging during the Prohibition era." However, one individual was aware that the stroll bothered people in the nearby apartments and another thought the major crime was tax evasion. Even so, we were advised repeatedly that the prostitutes would gladly pay taxes if the business was de-criminalized.

What all this suggests is that changing an act of parliament to suppress prostitution appears to have had little impact on the attitudes of those engaged in the

business in Calgary, particularly the prostitutes, and particularly under the modest regime of control witnessed since the law was implemented in Calgary. However, some of the remarks do point to an area where some change may have occurred--risk to the customers. We shall deal with this theme in the next chapter in which the impact of C-49 is examined more closely.

VI. SOLICITING, PROSTITUTION AND ADAPTING TO BILL C-49 IN CALGARY

"It doesn't matter what they do with the laws. I'll still work."

Prostitute cited in Lautt, 1984.[1]

Introduction: Identifying Areas of Impact

In our interviews, we attempted to identify from the experience of those prostitutes who have continued to work what effects, if any, the law has had on the conduct of the business. On the whole our experience proved to be frustrating. The sort of questions we devised were predicated of necessity on some discernable impact of the law on the street business and some consensus of opinion among the practitioners. There have been changes over the past few years, but we found little positive evidence in Calgary of anything dramatic in the practice of prostitution arising specifically from C-49, and we found little overall consensus on most of the questions we asked. Also, while some prostitutes may have left the business following the change in law, these people by definition were not available to us since our work was directed towards hookers and hustlers who were actively working at the time of our interviews. In fact, twenty-four percent of women and thirty-two percent of men began to work after the law was passed (i.e. one-quarter of the entire sample). In addition, we failed to contact any of the clients of the prostitutes to learn from them their views about the business--and would in any case have been faced by the problem of identifying the extent to which the social complexion of the dates has changed.

Finally, and perhaps more important, is the fact that soliciting has never been aggressively policed either prior to or following the current changes in the law. From 1977 to 1987 there have been approximately 311 arrests for soliciting conducted over a small number of sting operations. By contrast, there were some 500 tickets issued under the city by-law which would probably have been a more influential form of control than the federal law had it been found constitutionally valid. Consequently, the frustration we mentioned earlier arose from the fact that we were looking for the effects of a law which has never been applied very aggressively in Calgary, despite the vigour thought to have been added with C-49. Our focus on "before-after" questions was predicated on a dramatic shift in control which has generally not been employed vigorously and which was besieged by constitutional challenges even when it has been. This does not indicate that changes have not occurred. As we shall see, some changes did occur, and they appear to be

[1] Melanie Lautt, T.A.P. Towards An Awareness of Prostitution: A Report on Prostitution on the Prairies, Ottawa: Department of Justice, 1984, p. 160.

law-related and some are extremely grave. However, the overall influence of the new law appears secondary to the effects of the economy.

There were basically twelve areas which we asked the prostitutes about regarding the impact of C-49:

1. Whether there had been changes in the services offered and the rates charged, and whether such changes had been brought about by the law.

2. Whether there had been changes in the amount of income derived from prostitution, and whether such changes had been brought about by the law.

3. Whether there had been any change in the way in which customers were solicited, and whether such changes had been brought about by the law.

4. Whether there had been a change in strategies used to evade arrest by the police as a result of the new law.

5. Whether there had been a change in other methods used to contact customers as a result of the law.

6. Whether the new law had changed the relationship between the prostitutes and the police.

7. Whether the numbers of prostitutes working the streets had changed over the past eighteen months, and whether such changes had been brought about by the law.

8. Whether any individuals known to the subject had ceased to solicit as a result of the law.

9. Whether there had been a change in the locations used to turn tricks and whether such changes had been brought about by the law.

10. Whether the location of the stroll areas had changed over the past eighteen months, and whether such changes had been brought about by the law.

11. Whether there had been a change in the perceived dangerousness of the work as a result of the new law.

12. Whether there was a greater reliance on pimps as a result of the new law.

The exact questions employed, taken from several sections of the questionnaire, are described in the Table 6.1. The responses recorded were open ended. We wanted to obtain as much of the outlook and social categories of the respondents and their understandings of the threats posed by the law as possible. We coded the responses into the major categories suggested in the answers and then

represented these categories in simple frequency distributions. Since the men and women appear to differentiate in important ways, we have dealt with their responses separately.

Table 6.1

Questions[1]
13a. What services do you offer at what rates? Are the rates negotiable?
b. what service or services do you provide most frequently?
If prelaw experience : Has the new law affected the kinds of services or the rates you offer?
14. Since the law has changed, have you changed how you solicit customers?
15. How many tricks do you normally turn
a.) during an average day?,
b.) during an average week?
16. How much money would you make on an average day?
If prelaw experience : how do the number of tricks and the money compare to before the new law? Has there been a change? Is this related to the law or some other reason?
17. Do you know of any girls who have stopped working because of the new law?
18. Do you use contacts like hotel clerks or cabbies to contact tricks? Explain.
If pre-law experience : How does this compare to the prelaw period?
19. Where do you usually take your tricks? (car, motel, etc)
If prelaw experience: Has the new law affected this?
20. Since January of 1986 when the new law came into effect, has the number of hookers in Calgary changed? Is this related to the law?
21. Has the location of the strolls changed in the past 18 months in Calgary? [probe: Didn't there used to be more street hookers up on 4th and 5th Avenues---and on the 8th Avenue Mall]. Why the change?
6. Arrest hazards. What do you generally have to do to avoid being arrested by the police in Calgary?
If prelaw experience : how does this compare to before the new law?
7. How do you currently get along with the police in Calgary?
If prelaw experience : how does this compare with the previous period in 1985?
8. How safe do you feel at work on the street these days?
9. Have the streets got rougher since the law changed? or at least in the last couple of years?
If prelaw experience: Is this because of the law or for other reasons?
1. What percentage of the girls on the street are working with a pimp?
2. Do you think there are more pimps around in Calgary than there was two or three years ago?
3. Do you think that girls rely more on pimps now than they did a couple of years ago?
4. What about younger girls?
5. *If pre-law experience:* Has the law affected the percentage of girls who work with a pimp?

The responses will be described along the major twelve dimensions identified earlier.

[1] Questions 13-21 were taken from the section of the interview covering "The Current Business Picture of the Subject." Questions 6-9 were taken from "Occupational Hazards and Dangers--Medical and Legal." And questions 1-5 from "The Role of Pimps."

1. Services and Rates

The standard sexual services and rates quoted to us by the hookers were surprisingly consistent: $60, $80 and $100 for fellatio, straight lay and "half and half". Some individuals included masturbation in their repertoire--at $40. Most of the respondents indicated that the prices were negotiable by $10. A few individuals who were new faces on the stroll felt there was enough business for them that they did not have to cut their prices. Some hookers would only do straight lays although most quoted the three-tiered menu. Other services discussed ranged from domination to sexless dates. The kinky dates tended to be paid for on a hourly basis with charges in the area of $150 to $200 an hour. Requests for such services were relatively infrequent, although one of our respondents was interviewed immediately following an afternoon date with a customer who wanted to sniff her feet. Some of the older hookers indicated that the prices had not changed for about five years.

Table 6.2

Most Frequently Provided Service Reported by Hookers (Frequencies)

	Total Hookers	Excluding Novices	5+ Years Experience
Fellatio	18	17	9
Intercourse	20	13	5
Half and Half	8	5	3
Not Reported	5	4	2
Totals	51	39	19

The services provided most frequently by the women were straight lays (reported by forty percent of respondents), fellatio (reported by thirty-five percent), and half and half (reported by sixteen percent), respectively. We have broken down the figures for those who were not working prior to 1986 (in the middle column), as well as the figures for veteran prostitutes--those with over five years experience (right column). Fellatio is conducted for the most part in the date's car--sometimes quite close to the stroll. The other services are provided in motel rooms at "motel village" near the University of Calgary, and in several older hotels near the city core. The newer, modern hotels backing onto the south end of the stroll maintain a close scrutiny of the hookers to keep them off the premises, and many of the women have received formal petty trespass notices ordering them off the properties in future. Use of the date's or hooker's home appears to be quite rare--although it does occur with "regulars"--dates known to the women over a period of time. When we examine Lautt's data on sexual services we find that they generally accord with our own findings regarding the relative demand for different

forms of sex[1], although we asked only about the service provided "most frequently" as opposed to the entire gamut of services which prostitutes were requested to perform.

When we asked whether there had been a change in the rates or the types of services offered since the new law had come into effect, we found only one respondent who thought a change had occurred in the area of services--not offered but requested. One woman suggested that previously there was more demand for lays, and that this had been superceded by an increase in demands for fellatio in the date's car. So while most respondents suggested that the types of service offered had not changed (lays, fellatio and half and half)--this is a different issue from the popularity of each service as requested. Later responses throw more light on this topic. Rates were another matter.

Table 6.3

Perceived Change in the Rates for Services by Female Prostitutes (Frequencies)

	Total Hookers	Excluding Novices	5+ Years Experience
No Change	23	19	9
Decline	23	17	10
Uncertain	5	3	0
Totals	51	39	19

Although we were trying to determine whether prices had changed, many respondents interpreted the question as asking about the profitability of prostitution. Forty-five percent did not believe any change had occurred in services or rates. However, the same percent although that the financial returns to prostitution had declined (the remaining responses were unusable). Of these five mentioned that the law had "scared off" the customers, twelve mentioned that the money made by the women had declined--both because of the law as well as because of a decline in the economy (four cited the economy as the most important cause of the decline), and two mentioned that among the negative effects of the law was the appearance of more bad dates, more dates looking for cheaper services, and more competition between the women resulting in price cutting.

We turn now to the male respondents. Questions about rates and services were raised with the hustlers. Fellatio was the most frequent service reported by eighty-four percent of the men, followed for masturbation for the rest. The rates actually charged could not be determined with the same confidence as with the women. Masturbation was quoted in the $20-$40 range, fellatio in the $40-$60 range, and anal intercourse at $80. However, most of the hustlers were disinclined towards anal sex. The interviews suggested that prices and services were highly

[1] Lautt, op. cit. p. 81

negotiable; many of the respondents suggested that other hustlers were willing to provide sex for $10 or $20 depending on their looks, age and need for cash.

Table 6.4

Perceived Change in the Rates for Services by Male Prostitutes (Frequencies)

	Total Males	Excluding Novices	5+ Years Experience
No Change	11	8	6
Decline	5	5	2
Uncertain	3	0	0
Totals	19	13	9

Did the new soliciting law influence the prices or services offered? Fifty-eight percent thought that neither prices nor services was affected, and fifteen percent indicated they were not in a position to infer any such changes. However, ten percent mentioned that there were fewer customers, five percent each said prices had declined, the dates are looking for cheaper rates, and they were working less because of the law. As with the women, the effect of C-49 appears to have been modest but real, and appears to influence the customers more than the prostitutes. Also, the number of female respondents who reported declines was more substantial than males (45% versus 26%) which suggests that the impact was greater in the heterosexual than the gay trade.

2. Income

In an effort to sketch the business profile of our subjects, we asked them how many dates they would normally have on an average day and on an average week. We asked them how much money they made on an average day. We also asked whether the number of tricks turned or the amount of money made had changed as a result of the law. In our estimation, little confidence can be placed on the absolute values identified by the respondents in this fashion, although their detection of changes are more trustworthy. When we asked about the number of dates on an average day or week, we find recurrently through the interviews that they wanted to qualify their remarks. The most significant recurring qualifier is--"it depends". It depends on how much business is out there, how you dress, how old you are, how well known you are, how many regulars you have, how nice the weather is and things of this nature. One woman estimated she had fifteen to twenty dates per day--although this was a figure given to us most often as a weekly estimate of the number of dates. And certainly this estimate was not borne out by our own observations of her on the stroll. The most frequent daily estimate was two to four. Lautt recorded the figure of four or five per day in 1984. Lautt's wording here is instructive: in Calgary, "it was common to list four or five customers as a very good day"[1],

[1] op. cit. pp. 78-79.

although the interview question appears to have been "on the average how many customers do you see in a day?"[1] What is average and what is very good are quite different things.

We infer that when our respondents reported two to four dates a day they appear to have meant two to four dates when they were doing well, when there was lots of demand. Our subjects also reported that they might "blank" for days and become very frustrated. Asking about the "average" number of dates would require technically that all these slack periods when they failed to "break" be factored into the estimate. We do not believe that anyone did this--aside from telling us that "it depends". Subjects wanted to tell us about their best days, days when they were unusually successful. Many had days in which they "pulled" in excess of $1,000. And for obvious reasons, these days were more likely to be recalled during the interviews than days when they blanked. Also, since a lot of ego is linked to income, bias inevitably results in estimating the amount of business and the returns from it, especially where money is viewed as the most redeeming aspect of the job.

Most respondents described their average daily income in a range. If we estimate conservatively by using the figure from the low end of the reported range, we obtain a figure of about $249 for the fifty-one female hookers. This would suggest a weekly income of about $1,250 over five days, and an annual income of about $62,500. This is equivalent to about $80,000 in lawful income on which income tax would be paid. Even if we estimate more cautiously, allowing for a four day week, a three week month, the resulting $40,000 figure is still quite high. In our view, it would be incautious to infer that the average woman earns this sort of income, and earns it on a consistent basis. Some may. Many have very good days. However, most would be fortunate to earn a third of this on a consistent basis. This does not mean that the women were prevaricating--but that biases may exist which lead them to select good days as models of how much they make "on average". They probably meant that "on an average good day" $250 can be made. This would represent some three or four dates depending on the services, which is the upper limit of the most common self report. At another level, what prostitutes earn may be a less pertinent question that what they manage to keep, since it is common knowledge that, given the lifestyle, whatever is earned is quickly spent.

Having discussed the reliability of estimates of income, we turn to the second and more important question: the impact of C-49. We asked, "how do the number of dates and the money compare to before the new law? Has there been a change? Is this related to the law or some other reason?" In our view it is possible to find that the amounts of income were reported unreliably, while still believing that the subjects could accurately report on changes experienced as a result of the law. We already identified in the previous section that some of the prostitutes reported

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[1] op. cit. Appendix, p. 8

effects of the law on the financial returns to prostitution when asked about the rates for different services. What were the results of our more direct inquiry into the effects on income?

Few consistent estimates were given for the specific magnitude of change in the amount of money made before and after the new law. One person suggested business was down by half, another said by two-thirds and another by four-fifths. Obviously, it is difficult to determine how much stock can be put in such estimates. The open-ended answers were more helpful in establishing the impression of declining income and the reasons. There were basically three types of answers to our inquiry, splitting the female respondents into three camps.

Table 6.5

Perceived Change in the Income/Opportunities of Female Prostitutes (Frequencies)

	Total Hookers	Excluding Novices	5+ Years Experience
No Change	7	7	2
Fewer Dates	17	13	10
Less Money	17	16	7
Cannot Say	10	3	0
Totals	51	39	19

One-third of the hookers (n = 10 + 7) either thought that there was no impact as a result of the law, or were unable to comment on whether there was an impact or not. However, the majority believed that the law had had negative financial effects. One-third (n=17) stated that the law had affected the dates, that there were fewer than before, and that many of the best dates--the professionals and businessmen--were the most affected. Consequently, we infer that the intimidation of the customers has reduced the profitability of prostitution. The final third of the respondents, without referring to customers, reported specifically that the amount of money made through street prostitution had declined, although thirty percent of them thought that the downturn in the Alberta economy was a more important factor than the new law. In total, the answers from fifty-seven percent identified negative financial consequences arising from the law. The evidence of impact becomes more clear when we compare views of veteran hookers with the "excluding novices" sample. Clearly most are readily aware of the change in circumstances of their declining financial circumstances, although the law and the economy figure about equally in their explanations of the cause.

The financial picture of the hustlers is quite different. As with the women, there was a problem in identifying the "average" number of dates on a daily and weekly basis and the average daily financial take. The most frequent estimate of the number was one, or less than one (since four subjects worked only part time once or twice a week). Only about five of the hustlers expected multiple dates on a single

day. The average daily take for the nineteen respondents ranged from $15 to $190; the mean average was $67 per day--about one-quarter of the reported take of the women. Two trannies both reported income of $300 per week. What was the perceived effect of C-49 on income?

Sixty-eight percent thought either there had been no effect or they were not in a position to observe or infer any effect. About sixteen percent mentioned that their income declined because they had cut back their activities because of the new law, and that there were fewer dates due to the law from which we also infer that income had declined. So while not as clear-cut, the experience of a substantial number of hustlers is consistent with the views of the plurality of the women--that business had declined in this period. Whether the cause of the decline was the law or the economy remains, strictly speaking, an unanswered question.

3. Soliciting Behaviour

Probably the area where the most obvious impact of the law occurred was in how persons conducted themselves after its introduction. We asked subjects how they were soliciting their customers and whether there was any change as a result of the law. One-third of the women suggested either that they did not change their conduct, or that they were not in a position to notice any change in the conduct of others. In fact, in Calgary on the whole the women are relatively passive--there is little waving or imploring of customers to the curbside. As one respondent put it, prostitutes are not trying to hook men who are not shopping : "I have more self respect than [trying to get their husbands or brothers]. I can understand the law with respect to girls running out in the middle of the road and trying to get guys that are not that interested" (Interview #49). Only two respondents suggested that, law or not, they still waived over interested customers. The majority of the respondents changed to a more cautious approach. This was mentioned specifically by thirty-eight percent of the respondents. They indicated that they were generally "more cautious", "more passive", "no dancing around", "more beating around the bush", and more likely to wait for the prospective customer to make an advance on them. Many suggested that they let the dates indicate how much money they wanted to spend, and to say what they were interested in, while the women tried to limit their communication to innocuous utterances--"do you want some company?", or "looking for some company?"

Aside from those who reported a generally more cautious demeanour, thirty percent of the respondents identified specific strategies for evading the law. Twenty-four percent mentioned that they would ask the customer if he was a policeman--on the belief that the police are compelled by law to identify themselves when asked, or have their charges fail on the basis of a defence of entrapment. Parenthetically, this is not an interpretation recognized in Canadian law. Some women would go further and ask the prospective customer to "show some skin", or to squeeze the woman's breast, again on the understanding that this procedure

would identify the reluctant undercover policeman. Finally, three others developed what they thought were foolproof circumventions of the law. One would let the client identify what he wanted, then write the price down on his hand--on the belief that nothing was really communicated, at least orally. Another asked if the dates wanted to "go fishing"--and cited the price to catch "blow fish", "cod fish" or "some of each". And one emphasized that it was necessary to get the date to name an act and the price, leaving the woman faultless since she would be the victim of the date's soliciting, and thus be blameless for only accepting an offer, not communicating it.

Table 6.6

Changes in Soliciting Behaviour Reported in Calgary by Hookers and Hustlers (Frequencies)

	Hookers	Hustlers
No Change	17	2
More Caution	19	11
Specific Strategies	15	6
Totals	51	19

Among the nineteen male respondents, we find different patterns of adaptation. Only a few subjects advised either that there had been no changes in their conduct or that they were unable to identify any changes in how soliciting was done by others. Fifty-eight percent of hustlers mentioned that they had begun to comport themselves more cautiously--"sit back in the shadows", "no more hustling and ducking quickly in and out of cars" as before. A few mentioned that they specifically asked the prospective customer if he was a cop, one suggesting that the latter could be identified by an challenge to "hold my cock". Individual strategies mentioned to us were to "ask for donations," or have the date name the price and act, i.e. get the date to commit the soliciting, or rely more exclusively on phone contacts and telephone pagers. "Psyching out cops" was a strategy on everyone's mind, male and female, and was the major reason for the vigilance and caution which the law introduced into the street life.

James Gray suggests that one of the inadvertent effects of Prohibition was not to eradicate drunkenness per se, but to tone down the rowdiness and excessiveness of drunken comportment.[1] Similarly in the case of prostitution, we have evidence here that the strengthening of the soliciting law may operate not to eradicate prostitution, but to make soliciting less obtrusive, less noisome, and less provocative. Clearly, in the opinion of the plurality of the participants, this has

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[1] James Gray, Red Lights on the Prairies, Regina: Prairie Harvest Books, 1971.

occurred. While amounting to little in the way of improving public morality, such a change is positive from the point of view of public nuisance.

4. Evading Arrest and Non-soliciting Matters

In addition to asking whether the manner of soliciting had changed--in the context of questions probing the occupational hazards of prostitution, we specifically asked: "what do you generally have to do to avoid being arrested by the police in Calgary," and "how does this compare to before the new law?" For the most part, our respondents reiterated their tactics of keeping a low profile and detecting undercover police. They reiterated advice about the need to be attentive, to keep one's eyes and ears open, of making customers solicit them, and their street-wise wisdom about how to psyche out undercover police by asking them to show skin, etc. However, several hookers noted very explicitly that arrest was highly unlikely in Calgary, and thirty-seven percent reported that there were really no grounds for their changing how they conducted themselves except to avoid flamboyance, traffic interference and noisy behaviour. That ordinary vigilance and simple common sense were necessitated by the new law was recognized by both men and women.

There was also an awareness, in a small number of respondents, of the need to avoid causing heat by robbing clients--a practice which several older hookers attributed to some of the younger hookers and indeed several indicated they regularly attempted to steal money, credit cards and property from clients. "If the date leaves his car or if I can snoop through the house or the room when he's not looking, I'll take anything I want" (interview #34). Another respondent commented on this practice: "There are so many women that are working that are making it bad for the others, so many that are ripping off people. That's how people get hurt" (Interview #28).

This introduces two issues which we were able to identify only in the most cursory fashion during our study: the demands for police service caused by non-prostitution-related offences committed by prostitutes against other hookers, pimps, clients, and others, and the concomitant demand by prostitutes for protection from offences committed by others against them. Although we have indicated that there have been relatively few soliciting offences prosecuted in Calgary during the last decade, there is a surprising amount of victimization associated with the life of prostitutes that involves police investigation. In the report submitted to the Fraser Committee in 1984, the Calgary Police Service detailed scores of cases of theft of money and goods by prostitutes and pimps from customers and other prostitutes, as well as numerous cases of the victimization of prostitutes by pimps, customers and other hookers. These were only a sample of all the cases, and not all such incidents resulted in charges. We attempted to up-date the

trends in charges and victimizations through an inspection of the records of police-prostitute interaction requiring police investigation. As far as we know, virtually all such incidents are recorded by Calgary Police on the departmental computer. Where an accused or victim is known to be involved in prostitution or an escort service, the police record the subject's job as an "illegal occupation". Such cases can be pulled from the annual records independent of the type of charge. This makes it possible to observe the trends in offences and victimization involving prostitutes over time.

What we have confirmed by a sampling of the 1984 cases is that the policing of prostitutes for non-prostitution offences (theft, assault, cause disturbance, trespass, narcotics), and the delivery of services to individuals who have been victimized in the context of prostitution (stabbed, intimidated, assaulted), appeared to be of greater magnitude than tallies of soliciting, bawdy house and living on the avails offences. Search of the Calgary Police Service computer records identified respectively 108, 84 and 102 victims of crime who were classified as prostitutes for the years 1984 through 1986. The numbers of persons investigated as suspects or accused for non-soliciting matters over the same years were 275, 339 and 408.[1] Figures for 1987 were incomplete at the time of writing. It is not clear whether more offences are being committed increasingly by prostitutes over the '84-'86 time frame. For example, a decline in some other categories of offences in Calgary may have allowed greater policing of the prostitution area. Also, it is not clear from the police reports how independent the charges are from soliciting activities. A substantial number of petty trespass notices derive from frequenting hotels--presumably in a professional capacity. Other reports reflect patterns of mutual victimization by persons in the same subculture.

Trends aside, the lesson we draw from these figures is that a focus on soliciting, and how individuals may or may not evade it, excludes the involvement of hookers in other areas of both petty and serious criminal offences, and victimization--areas which may be more demanding in terms of police attention than those which currently concern policy-makers. It may well be that we are trying to control prostitutes through soliciting laws while overlooking their capacities for offence and for victimization which lie elsewhere. And more to the point, if the accused prostitute figures for 1984 (275) through 1986 (408) do reflect real increases in offensive conduct, we ought to inquire whether this is a consequence of attempts to shut down soliciting. Unfortunately, our sampling of the cases was incomplete and did not allow us the draw such conclusions.

[1]The reports are almost exclusively concerned with the activities of female prostitutes.

5. Contacting Clients.

One of the concerns raised in the introduction of C-49 was that the new controls provided under s. 195.1 might change the way in which prostitutes contacted their prospective customers. In addition to soliciting dates on the streets, it is known that many hookers use contacts--cabbies, hotel clerks etc--to meet customers.[1] We asked our respondents whether they used hotel clerks or cabbies to contact dates, and whether the law had changed this practice. In Calgary this did not prove to be a fruitful avenue of inquiry. We were advised overwhelmingly that this was not an important source of dates for street hookers. Only two respondents suggested that cabbies were becoming more important as contacts for dates, one of them reporting that "many cabbies are pimps"(interview # 5). Twenty-two percent mentioned that cabbies and clerks were rarely important, and that no change had occurred as a result of the law. The remaining seventy-five percent did not think these intermediaries were important for contacting dates, and that nothing had changed in this regard following the new law.

Among the hustlers, only one respondent reported that contacts were important for meeting dates, although this had not been influenced by the law. The balance although that intermediaries were not very relevant. However, one-third of this group mentioned that they were making greater use of phone contacts, lists

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[1] Robert Prus and Steve Irini, Hookers, Rounders and Desk Clerks: The Social Organization of the Hotel Community, Toronto: Gage, 1980.

Table 6.7

Use of Intermediaries Reported by Hookers and Hustlers in Calgary (Frequencies)

	Hookers	Hustlers
More Use	2	1
Rare Use	11	0
Never Use	38	18
Totals	51	19

of dates circulated among friends and/or using pagers to return calls from interested parties. Phone lists were mentioned by only three of the hookers, and in those cases there was no indication that telephone contacts were being utilized more due to C-49. In summary, there is virtually no evidence of changes in the use of cabbie or hotel clerk intermediaries.

6. Relationships with the Police

Our discussion of arrest evasion uncovered some evidence of the positive relationship between respondents and the Calgary Police. One issue raised by C-49 was the possibility that aggressive police enforcement could lead to an alienation of the hookers from the law. Aggressive patterns of arrest, prosecution and punishment could make prostitute cooperation regarding the siting of strolls, the identification of juveniles and information on the activities of serious predatory, narcotics and property offenders more problematic. We have been advised in Gray's historical study of prairie prostitution that vigorous arrest policies and threats of severe penalties made convictions virtually impossible. Crack-downs on known brothels dispersed the trade to surreptitious locales that were more difficult to regulate. Similarly aggressive policing of the prostitution business today could lead to a confrontational relationship and undermine the ability of the police to isolate soliciting within the stroll areas. Has the introduction of C-49 influenced the prostitutes' relationship with the police? To answer this question we asked our subjects, "How do you currently get along with the police in Calgary?" and "How does this compare with the previous period in 1985?"

We were surprised by the number of female respondents who reported very positive relationships with the police and the need to maintain these. Twenty-two percent stressed the need to be polite to the uniforms, to be cooperative, and to respect the police. "When I see a cop, I say 'hi' and act really friendly to them. It doesn't cost a nickel to be nice"(Interview # 28). Others commented on the identification program in positive terms. By contrast, only two of the males spoke about the need to maintain good relationships with the police--most favoured surveillance, avoidance, and evasion. Suspicion more than hostility marked the attitudes of the men. And among the women, only two respondents expressed hostility towards the police--one a juvenile who had been picked up repeatedly, and a veteran hooker who did not perceive the need to cooperate. If we were to attempt

to develop a scale to represent the hookers' views, we would find ourselves trying to differentiate "great" from "good," and "fine" or "fairly good". In other words, we found largely positive relationships. Only a few respondents reported negative relationships, said they ignored the police, or had not been in town long enough to form an impression. The balance indicated that relationships were positive and that there had been no change. Also, only one respondent thought that her relationship had worsened since the new law was passed.

The same impression is conveyed by the many of the hustlers. Only four reported that their relationship was "so so" or "poor". The balance reported that their relationships were positive and relatively stable. There were variations among the patrolmen. As one of the men put it: "Some [cops] I get obnoxious with, some I'll sit and chat with. I know the officers individually who patrol this area. There are twelve of them. Two are terrible, one I can barely tolerate and the rest I would almost consider social contacts." (interview #20) The Calgary police created a special unit whose members were very well known to the street people, especially the male hustlers, virtually all of whom were known to the officers individually.

The overall positive impression was also confirmed in answers to two questions put to subjects who had worked in other cities and who were able to compare their impressions of the differences. We asked subjects: "Where [in what city] do you experience the most interference with the police?," and "Where do you find the police most helpful?" Eight of the women and six of the men had worked only in Calgary. The majority of prostitutes, especially the women, had worked in several Canadian cities. Cities most frequently mentioned were Edmonton, Vancouver, Winnipeg and Toronto. The city mentioned most frequently as a source of police interference was Edmonton, and for police assistance, Calgary. This was true for both sexes. However, the August decision of the Alberta Court of Appeal and the resulting stings will probably take police prestige down a notch, although we are still far from experiencing the massive arrest programs witnessed in Toronto and Vancouver.

7. Changes in the Number of Prostitutes

Did the law succeed in reducing the number of women engaging in prostitution? It is our impression as Calgarians that the number of hookers working the main stroll has declined from what one could observe early in the 1980s. However, this impression is difficult to substantiate. In our interviews we asked the prostitutes their impressions of changes in the numbers over the past couple of years. Specifically, we asked: "Since January of 1986 when the new law came into effect, has the number of hookers in Calgary changed? Is this related to the law?" Answers fell into four categories: no change in numbers, fewer hookers, more hookers and difficult to determine.

Table 6.8

Perception of Changes in the Number of Street Prostitutes in Calgary-Hookers (Frequencies)

	Total Sample	Excluding Novices	5+ Years Experience
No Change	16	14	4
Fewer	14	11	7
More	15	12	6
Cannot Say	6	2	2
Totals	51	39	19

What the distributions suggest is that there does not exist any consensus among the women as to what happened to the numbers following the change in the soliciting law: a third thoughth there had been no change, a third thought more, and a third thought fewer. Even excluding the twelve "novice" hookers who started working after the law came into effect, the proportions of the responses remain the same. We thought that those who had been in the business a long time--five years or more--might have a better idea of what changes had occurred. These nineteen individuals again showed no real consensus as to whether the law affected the numbers on the street. The same trend was evident among the hustlers, although the veterans believe there are more on the street following the change.

What explanations did the respondents give for their perceptions? Among those women who believed there were fewer individuals working, thirty-eight percent believed the economy to be a more important determinant of the change--the economy was down, the dates had less money to spend, and the women were more likely to quit as a consequence. Several women also pointed out that the number of dates was down because of the law enforcement. Also, among both men

Table 6.9

Perception of Changes in the Number of Street Prostitutes in Calgary-Hustlers (Frequencies)

	Total Sample	Excluding Novices	5+ Years Experience
No Change	5	3	3
Fewer	4	4	1
More	5	4	3
Cannot Say	5	2	1
Totals	19	13	8

and women, AIDS was identified as a reason for the declining number of dates. It was interesting that the poor economy was cited by several of the young men as a reason for engaging in prostitution, not for quitting it, even though the business for them did not provide a living wage.

Finally, those who remarked that the numbers were pretty stable also pointed out that while the overall numbers may be the same, there is a perpetual turnover of faces--something pointed out by a number of the respondents, and confirmed by our own experience on the stroll during the summer. One commented: "A lot of new girls I've never seen before. Every time I go away and come back, there are more new girls. From four years ago, only about ten of the girls are still working." (Interview # 49) The same impression was conveyed by several hustlers. "They [the hustlers] are forever changing. It doesn't matter whether it's ten years ago or ten days ago...you're always seeing new faces" (Interview # 66). "There have been new faces coming and going all the time, different faces, all the time" (Interview # 68). This might explain why it was difficult to find any consensus among respondents regarding changes in the numbers--they are constantly seeing new people. The attrition rates tend to be high, especially among the younger set, and even the old faces tend to be mobile.

8. Squaring Up

Another indication of the impact of the law on the number of persons working as prostitutes was explored in a question dealing with knowledge about persons known to the respondent who had quit the business in the aftermath of the law. We asked, "Do you know of any persons who have stopped working as a result of the new law?" The results indicate that thirty percent of our subjects knew personally of such cases.

Table 6.10

Persons Known by Respondents to have Quit as a Result of Changes to the Law (Frequencies)

	Yes	No	Cut Back	Totals
Female Respondents	16	35	unknown	51
Male Respondents	5	14	(7)	19
Totals	21 (30%)	49 (70%)		70

Obviously, it is difficult to determine from hearsay what the actual reasons might be for stopping prostitution, but in the opinion of the majority of the reports of quitting given to us (from 30% of our respondents), the new liability to arrest and conviction was decisive. However, not every report of quitting would be deemed a success. In two cases the interviews suggested that the individuals merely moved to related businesses--escort and stripping. In two other cases women quit after the passage of the legislation, but only temporarily; within months they were back on the street. We were also advised by two respondents that those who quit tended to be among the younger women. Those who had been working for a long time were not likely to be deterred. We did not attempt to tally the number of persons reported to quit, since many of the subjects were known to one another and may all have been thinking of the same individuals. Also, the law may have been the main reason for quitting, but other relevant factors were the downturn in the Alberta economy as well as the murders of two Calgary prostitutes in 1987.

The picture we have of the hustlers confirms the trend we find among the hookers. However, a number of the men specifically differentiated quitting from "cutting back" or "cutting down", and among those seventy-four percent who suggested they knew of no one who quit, half did know of individuals--in many cases including themselves--who reduced the extent of their activities. This was not volunteered by any of the women who reported in the negative. The observation accords well with the variability in the numbers of hustlers observed on the male stroll which was described in the previous chapter. While we find consistent trends in the number of women working, the numbers for the men jumped erratically. It also accords with the differences noted in income--the hustlers appearing to be less consistent in the number of dates and the amount of income reported. It would appear that the vast majority of women working as hookers make prostitution the major source of livelihood, while for many of the men it is done in addition to other work, and possibly for different reasons, sometimes having to do with coming to

terms with homosexual identity.[1] For this reason, many of the men can cut back, while the option for the women appears to be hook or square up.

9. Location of Tricks

One of the themes raised by changes in the law was the possibility that the risk of arrest for soliciting might lead to changes in the location of the sites where prostitutes obtained dates and their dates tried to evade detection. We asked our subjects: "Where do you usually turn you tricks?" and "Has the new law affected this?" Again the pattern we observe is that a majority of women report no effect, and a substantial minority report some change, although for contradictory reasons.

Table 6.11

Was There a Change in Where Prostitutes Turned Tricks? (Frequencies)

	Total Hookers	Excluding Novices	Total Males	Excluding Novices
No Change Observed	34	25	16	12
Change Observed	17	14	1	1
Cannot Say	0	0	2	0
Totals	51	39	19	13

One-third of the women reported there were changes in the choice of trick sites following the change in the law. This proportion remained virtually identical when the novices were excluded. Among males, only one reported changes in the site. What were the nature of the changes identified by our subjects? There appear to be three specific factors which produced changes in the activities--greater vigilance on the part of hoteliers in keeping prostitutes off their premises, greater concern by prostitutes and dates to evade detection by the police, and a declining economy which created more demand for cheaper services. The first and third factors created more demand for car dates. This change was cited by one half of the hookers and one hustler. The second factor led four hookers to avoid car dates altogether (in addition to one who avoided them as a result of a bad experience). However, the same factor led another three women to continue car dates, although with a much greater concern for secrecy and usually at a greater distance from the stroll than before, bringing them into alley ways and side streets miles from the stroll.

Do such changes reflect the impact of the new law? Certainly paranoia among the dates resulted from the law. However, the worries of hoteliers might be more directly a result of the 1984 raid on the La Concha Motel, which was as close

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[1] Livy Visano, This Idle Trade: The Occupational Patterns of Male Prostitution, Concord: VitaSana, 1987.

to a brothel as Calgary has seen in decades until the raid shut it down. (As one of our respondents put it: "There are no real brothels. It would be nice if they got one hotel that was safe. That's the way the La Concha used to be. It used to be great up there" (Interview # 13). And the change in the economy experienced by the prostitutes may reflect another external factor creating demands for cheaper services. Alternatively, it might also reflect the change in the complexion of dates resulting from the differential impact of the law on the customers. We were told repeatedly that the better class of date was hard to find after the law appeared--leaving fewer of the big spenders and more of the weirdos. Consequently, the risk experienced by respectable dates could only aggravate the already declining returns to prostitution.

10. Stroll Stability

We wanted to inquire into whether there had been a shift in the location of the strolls as a result of the law displacing soliciting to non-traditional areas. This has obviously not occurred in Calgary. Virtually every respondent denied there had been any change in the streets used for soliciting over the past several years, and those who were unsure were nearly all from out of town and unfamiliar with the city. One Vancouver hooker suggested that one of the reasons she liked the Calgary police was that "they tell you where to work". Therefore, at least for the time being, the strolls remain unchanged.

11. Perceived Dangerousness of Street Life

Aside from the risk of arrest, has the change to the soliciting law made prostitution a more dangerous or threatening experience for its practitioners? We asked our subjects several questions to explore this. First we asked, "From the point of view of physical safety, what precautions do you take when you are working?" and "Is it necessary to carry any sort of weapon for defence?" The results were a rather large number of individual strategies which we have tried to describe below. Many of the strategies were fairly widely employed--such as working in pairs, groups or within a glance of one another. Even those who reported that they worked alone were generally within ten or fifteen meters of other prostitutes, and consequently were able to monitor each other as well as the date's car. Virtually all of the workers who were "working together" would record the licence number of the vehicle which picked up a friend. This was the most frequently mentioned precaution

Table 6.12

Precautionary Strategies Taken by Prostitutes to Ensure Safety (Frequencies)*

	Hookers		Males
Licence Recorded	16		2
Carries "Weapon"	9		6
Licence & Weapon	6		1
Defensive Training	0	(2)	4
Weapon and Training	0		2
Spotters/Watchers	2	(2)	0
Common Strategies Only	18		4
Totals	51		19

*Figures in brackets refer to a secondary strategy mentioned by respondents. Primary strategies of each respondent reported without brackets.

In this table we have tried to highlight the key precautionary strategies and have identified weapons, licence records, pimps and defensive training (and their combinations) as primary categories. We have also sought to separate these from strictly occupational common sense and individual strategies. Consequently, "strategies only" are meant to identify the number of persons whose precautions did not include references to weapons, licence spotting, pimps, or martial arts training. Such strategies tended to be common to virtually all respondents whether they carried weapons, for example, or not. Finally, some of those who carried weapons also had defensive training or used watchers to ensure their safety. Their numbers are indicated in brackets. The weapons mentioned were knives, for the most part, although many things like safety pins, pointed umbrellas, forks and other items that might be used as weapons were also disclosed. In addition, three of the women reported that their reliance on knives was intermittent, and appeared to reflect paranoia over particular bad dates. We have cited martial arts training among the precautions because our respondents mentioned it to us in this context. However, their level of training was rudimentary.

What about the "common strategies only" category? What are we referring to here? The most important precaution is "psyching out the date"--i.e. trying to figure out if the date is normal, pleasant, clean, and acceptable. Obviously, regular customers had been psyched out in previous occasions so that most of what we are describing applies to new dates. In assessing the suitability of customers, many prostitutes reported that they would not even consider Black, Middle Eastern or Asian customers. However, their major worry is the bad trick--the customer who becomes abusive or aggressive, who might be on drugs or intoxicated, who robs or attempts to rob or abuse the prostitute, or who forces her to have sex without pay. Many advised that it was essential to chat for five or ten minutes in the cars just to form an impression of the customer by assessing the financial benefits as well as the

physical risks, and ensuring that there were no obvious weapons in the car. Several mentioned that they lit cigarettes to have an impromptu defensive weapon. In one case a women told of a strategy of leaving fingerprints on the glass windows so that if she disappeared there would be a trace of her presence in the car. Also, many mentioned the need to keep the door unlocked and the seatbelt loose in case they had to make a quick emergency exit, as some had been required to do in the past.

If the dates were staying at downtown hotels, some women reported leaving the customer to cool his heels while they went to the corner to phone the hotel desk to confirm his registration. Usually little worry was attached to persons with such accommodations since these were thought to be people with a lot to lose if things went wrong. At cheaper motels, the prostitutes would check out the rooms to ensure there were no weapons or other men present. At rooms rented by the prostitutes, many mentioned that they were well known to the clerks and could call on them for assistance. Some would pre-order taxis to arrive when they expected the date to be finished. If dates wanted to invite a prostitute to their apartments, the prostitute might insist that the date show a driver's licence with his address to a co-worker.

For the sexual services, our respondents stressed the need to take charge and manage the situation. Payment is required up front, and if the date later wanted more than he paid for, re-negotiation of the fee would be necessary. Most insisted on undressing, washing and inspecting the date (for disease) before they undressed. Some suggested that their clothes had to be kept in the washroom so that if something went wrong, they could retrieve their clothes and, if need be, lock themselves in. Obviously, stage managing the affair in a car is more difficult, and several respondents had stopped doing tricks in cars precisely because of the potential for loss of control. However, as we have already established, there are economic pressures creating trends towards more car dates with the greater hazards entailed by this setting.

How safe do the prostitutes feel, and have the risks to prostitutes increased over the past two years? To explore these questions we asked: "How safe do you feel at work on the street these days?" and "Have the streets got rougher since the law changed? or at least in the last couple of years?...Is this because of the law or for other reasons?" The results are shown below.

Table 6.13

Subjective Perception of Safety of Street Prostitutes (Frequencies)

	Hookers	Males	Totals
Feel Generally Unsafe	22	8	30
Feel Neutral or Safe	25	11	36
Cannot Say	4	0	4
Totals	51	19	70

The reasons the respondents gave for their feelings are instructive. Those who suggested that they felt safe overall or who were neutral identified the fact that they were very cautious and choosy about their dates, that they were relying more on regulars, that they were more likely to cut back late night activities and work more during the day, and that they had other prostitutes as well as their pimps looking out for them. Those respondents who had misgivings about their safety identified the increasing number of "weirdos" and "warped" men among the dates (cited by four respondents), the paranoia which was caused by the law, especially after the August appeal decision supported the constitutionality of s. 195.1, hassles from pimps among some unpimped women, and the proliferation of drugs which was putting a lot of people on edge. Among the hustlers, the chief source of worry was not violent dates, but "breeders" or "fag bashers" who often hassled them during the summer; this was mentioned by six out of the eight men who reported feeling threatened on the street.

Has this situation changed? Have the streets gotten rougher in the past two years, and is this a result of the law? As in the previous table, we coded open-ended answers to this question into some simple categories: "yes", "no" and "cannot say" (indeterminate or uncertain). None of the respondents had experienced an improvement on the streets. Since this question presupposes some familiarity with the situation prior to 1986, we have identified the separate responses for the total sample, the sample with the novices excluded (i.e. those not working prior to 1986), and the sample of veterans. The Table 6.14 reports on the hookers.

Table 6.14

Prostitute Perception of Changes in the Level of Threat or Violence on the Streets (Frequencies)

	Hookers Total	Excluding Novices	5+ Years Experience
Yes, Rougher	23	18	9
No Change	23	19	10
Cannot Say	5	2	0
Totals	51	39	19

The respondents were evenly divided regarding their perceptions of changes in the levels of unpleasantness on the streets, and this was true whether we consider the whole sample or either of the sub-samples. Among those who identified increasing problems on the street, what did they feel was the source of the problem? And can this be traced to the new legislation? The evidence suggests that much of the added aggravation of street life is law-related. Among the forty-five percent who suggested there had been a change for the worse, the following factors were identified (in order of importance): changes in the nature and attitude of the dates (n=6), greater competition between the prostitutes for the dwindling number of dates (n=6), greater use of drugs by pimps and prostitutes (n=3), a combination of these previous factors (n=2), more psychological stress on the women because they felt that society was rejecting them with the new law (n=3), more pressure on the women by their pimps (n=2), and unspecified (n=1). Let's examine two of these issues in more detail.

1. Dates. Several women mentioned that not only had there been more bad dates, but that there was a perceived change in the attitude of the dates as a result of the law which caused some of them to become more aggressive. Since the prostitutes were now formally outside the law, it was thought they could be exploited more easily, and since what they were doing was illegal, they no longer had recourse to the protection of the law if they were ripped off in any way. "The new law is a ticket to the freaks. Making prostitution illegal gives freaks permission to abuse and murder girls. Murder has increased since the new law" (Interview #12). "Guys think they can take advantage of us because we're under pressure--and the girls are going to grab anything they can get--which will make things more dangerous for them [the women]" (Interview #56) . "There are more bad dates in Calgary now. Dates are better in Vancouver, they're not trying to cut you down and pay less money like in Calgary" (Interview # 24). "There are more bad dates now. There are guys out here who will get it for nothing using whatever means, a knife, a gun, beat you up, whatever...it has happened to me...guys feel that with this law you won't be going to the cops"(Interview "54).

2. Increased freebasing and use of cocaine in 1986 aggravated relationships between the prostitutes. Although it is a commonplace that drugs have been associated with prostitution for decades, it is still relevant that *new* fads in drug use impact the street culture in unpredictable ways. "They should start cracking down on drugs. The girls who have a habit are more apt to endanger themselves and their dates--to steal from the dates, go without a safe" (Interview #12). "Things used to be better between girls and their pimps before cocaine and free-basing became so dominant on the street" (Interview #9). It is difficult to determine whether the heightened use of drugs identified by some women in 1987 was a result of pressure from the new law or whether it was simply a fad. On the issue of drugs, it is worth noting that several of those respondents who said things had not become rougher also specifically pointed out that they were not involved with drugs. Clearly, in the perception of the hookers, there have been changes for the worse, some as a result of the law. What does the record look like for the hustlers?

Table 6.15

Prostitute Perception of Changes in the Level of Threat or Violence on the Streets (Frequencies)

	Male Total	Excluding Novices	5+ Years Experience
Yes, Rougher	9	5	5
No Change	9	7	3
Less Rough	1	1	0
Totals	19	13	8

Again, we see a relatively even split of opinion as with the women that appears to be independent of the sample examined. As with the earlier question about feeling safe, the overwhelming concern of the men who felt that the streets had become rougher was not a change in the type of date or increases in competition (these were each mentioned once), but fear of assault from macho "fag bashers"(mentioned by five subjects). Is the law related to this? There is an indirect link--media coverage of the male stroll following the introduction of the law apparently brought out gangs of young men looking for fights. However, this appears to be a fairly infrequent source of confrontation and has been only indirectly influenced by the new soliciting provisions.

12. Changes in Pimping?

Did the greater vulnerability of prostitutes to arrest make them more dependent on pimps? Obtaining reliable information on pimps was virtually impossible. We did not interview any pimps--at least pimps in the traditional sense. We did interview some experienced hookers who appeared to be "sponsoring" other women, and men who were sponsoring other men. When we had a draft of a questionnaire vetted by two hookers in a strip club on the main stroll, we were advised that none of the girls would admit being pimped. The vice detectives advised the same thing. In fact, the prostitutes were not very candid among themselves. The two women who looked over our questionnaire were working together and each had advised the other that she was working freelance--although we learned when one went to the powder room that the other was pimped though did not want her street partner to know this. Also, we never learned a great deal about the leverage pimps had over both freelance women and pimped women from out of town. Some freelance women visiting Calgary were paying fees of $250 to work on the main stroll during Stampede. One boyfriend of a visiting hooker was offered $1000 to leave town without his girlfriend by individuals interested in controlling her. "In Victoria I could work as an independent. Here I'm charged for working on the street, even although I've got my boyfriend here..I don't think I should have to pay the pimps here just because they say so"(Interview #26). Both left town together. Needless to say, our grasp of pimping was not very penetrating.

Rather than ask our respondents if they were being pimped, we asked them to estimate what percentage of prostitutes in Calgary were, whether there had been any change since 1985, and whether this was a result of the law. Sixteen percent of the females volunteered that they were not, or at least not currently working for a pimp--several had been when they were younger. Fifty-seven percent thought that over ninety percent of the other women were pimped, and eighty percent thought that at least half of the other women were pimped. Were there more or fewer pimps thought to be operating in Calgary in the aftermath of the law?

Table 6.16

Are there More pimps operating in Calgary today than before? (Frequencies)

	Total Female	Excluding Novices	5+ Years Experience
No Change	17	14	9
Fewer	6	6	3
More	14	8	0
Cannot Say	14	11	7
Totals	51	39	19

These distributions reflect the same diversity of opinion we have seen in the other tables with one exception--the numbers reporting an inability to comment meaningfully on the issue were unusually large. In other tables this residual

category reflects the smallest portion of the response types. However, both veterans and the total sample show a surprisingly large inability to comment. This by itself argues against significant shifts in the role of pimps. How could these occur without notice? And this belief that no change has occurred is the most consistent observation over the sample sections. There *are* differences between the novices and the veterans, which we infer by the significant drop in the "more" category when we exclude the novices from the total sample. Apparently, those with no pre-law experience seem to feel that more pimps are operating, while the older women who have weathered a lot of change believe that things are quite stable. This may reflect the instability of the life experiences of younger versus older hookers; the former may be still entwined with pimps/boyfriends/watchers while the latter may have resolved earlier tensions and become more settled. In any case, it is evident that there is a clear plurality of opinion that there were not fewer pimps.

What about the notion that the law may be responsible for the greater involvement of pimps among those respondents who perceived this? Not one of our respondents thought that there had been any change in the number of pimps or reliance on pimps as a result of the new law. Many thought that reliance on pimps was more liable to be relevant among younger women who were infatuated with the pimps who turned them out. Put in other terms, the pimping role is more emotional than instrumental. And then there were those minority voices who suggested that the declining returns to prostitution made pimping a less attractive option to the men, and reported that those who remained associated with hookers had turned to more conventional jobs, and acted more like managers than masters.

What was the response of the hustlers? Although one of the respondents suggested that "gay is freelance," and while seventy-nine percent felt that the concept of pimping in the hustler trade was inappropriate, we did find some evidence of a kind of transitory, exploitative role that a fifth labelled as pimping. This was a definitional matter. Some experienced hustlers may teach newcomers survival skills on the street, and might provide shelter in exchange for the neophyte's contribution of a share of the earnings. This would be spent collectively for drugs, food and shelter under the direction of the senior hustler. These relationships tend to be both temporary and less alienating than the running of hookers by male pimps.

When we asked whether pimps had become more prevalent in the aftermath of the law, the hustlers like the hookers reported in the negative. The question proved meaningless, even for the four respondents who defined certain hustler relationships as quasi-pimping, since the nature of the relationship was more one of apprenticeship than emotional and financial dependence. The definitional issue was also a lively one for the women. Although we tend to stereotype the pimp as a nasty black dope fiend, a white slaver, many hookers suggested that this view was hysterical. Here were some of the discussions of pimps:

"You've always got someone around as a boyfriend. That is what it is. Because of the politics, you can say you have a name...Its hard on some of the girls because the man never likes them as much as they like him. They want the attention. (Interview # 12)

"Younger girls need pimps because they are stupid. The older working girls don't need them, because they are old news."(Interview # 25)

"There are more pimps because there are more younger girls. But who exactly is a pimp is another thing. The first year the economy went bad, I met a working lady on 4th who was supporting her husband. Her husband, who had provided for her all these years, had been fired and so she thought it was time she supported him." (Interview #36)

"It was a lot rougher then[before the new law]...used to be like a war zone. There used to be certain girls that worked certain corners. Regular customers would know where you were. Now there's not that many girls so everybody stands where they want to. Once in a while you get a little pushing and shoving. But compared to the way it was...there used to be stabbings. A few months ago a girl got stabbed because she tried to put someone off their corner. A Calgary girl got stabbed and a "stateside" pimp stabbed her. Stateside pimps are crazy. They walk about and bump the girls. Canadian guys don't do that. One stateside pimp tried to bump me and I just flagged a cop over. I don't believe in paying men. Never would. The girls that do are stupid. I'm not out there for fun, and definitely not to give my money away. I like to GET paid, not pay. I have to support my 7 year old boy." (Interview # 49)

We do not pretend to have a good grasp of the situation of pimps and their relationship to the women. The only lesson we have learned is that there is tremendous variability in these relationships. This point is suggested by Gemme et al's reference to prostitution as a "fragmented, multi-faceted phenomenon".[1] In some cases the white slaver imagery is accurate--Lebanese and Black males have been involved in multiple hooker operations, sometimes involving juveniles. In other cases, we are dealing with husbands, boyfriends or lovers. As the Fraser Committee recommended, this is an area deserving future research, especially if the differential practices of male versus female prostitution reflect the differential role of the pimp in each subculture.

Summary

What have we learned? First, services and rates, at least as "advertised" by the practitioners, have not changed. What has changed is the clients' preferences for these services and the income obtainable from them. Here the economy, by controlling disposable income and by influencing the size of the young male labour force in Calgary, is probably a more important variable than the new law, although the law, by differentially intimidating people of different status, has had an economic effect of its own. Soliciting behaviour, and practices pursued to evade arrest, have had the effect of making conduct on the street less obtrusive. This has not been, however, a major problem in Calgary to begin with, and the changes in evasive conduct have had little consequences in the ability of the police to conduct

[1] Robert Gemme et al. A Report on Prostitution in Quebec, Ottawa: Department of Justice, 1984, pp. 143.

sting operations. Nonetheless, the change in comportment may lead to a reduction in pressure to mount such operations.

The use of intermediaries and relationships with the police have not been influenced by the new law. However, the rather positive relationship with the police has evolved with a stroll management approach and relatively few arrests--at least for soliciting. Over the past ten years, the majority of arrests for soliciting have been conducted on fewer than twenty major operations. We have also tried to indicate that the police are kept rather busy dealing with other situations involving prostitutes. However, in terms of soliciting, the test of the management approach will come when the last of the downtown areas is developed and when land-use friction will become a major municipal concern. Then the police will be forced to identify a new area, probably a less desirable one from the point of view of the hookers.

In terms of the numbers of hookers and hustlers working, the responses from our subjects are completely divided about whether any change occurred since 1985 and in which direction. There is a substantial body of opinion that significant numbers left the streets after the law changed, but there is also a lot of evidence that there is a continual uptake of new faces. Perhaps the continual influx of new faces creates the impression that there is no discernable shift in overall numbers, even though such numbers may be declining, at least marginally (presumably dramatic shifts would be more obvious). If our reports about a downturn in income are valid, then prostitution is unlikely to be a growth industry, particularly among women. Male prostitution appears to have other underlying dynamics and is probably not as sensitive to changes in the economy. The implication of this interpretation is not completely sanguine since it does not necessarily follow that the numbers will fall as the financial returns decline. The implication may only mean that individual careers are shorter, and that the turnover is higher. If this is true, then the spread in the bimodal age distribution should become even wider. Also, it may only mean that individuals will have to work longer to maintain stable levels of income.

On the matters of stroll locations and trick sites, there is little evidence of change. The strolls themselves have not changed, and neither have the sites, although there is a noticeable shift in their utilization; i.e., more car dates in remoter locations. This is tangentially related to the issue of dangerousness. There is always a significant amount of paranoia on the street over arrest and victimization. The new law appears to have augmented this by reducing the number of higher status tricks, and increasing the exposure of the hookers to more bad dates. The greater vulnerability of the women to arrest has led some of the dates to take advantage of them. On the related issue of dependence on pimps and the numbers of pimps in the city, this does not appear to have changed as a result of the law.

VII. SECTION 195.1 AND THE ESCORT BUSINESS IN CALGARY

"There is no doubt that it is a preferable way to satisfy the desires of certain sections of the community" Superintendent Ron Tarrant, Calgary Police Service.

"There is much less crime associated with them [the escort agencies]" Staff Sgt. Roger Boiteau, Calgary City Police Service Vice Squad.

Quoted in The Calgary Sun, April 1 1984 p.2.

"As Parliament is about to pass a tough amendment to the Criminal Code to ban prostitutes and their customers from the nation's streets, it's clear the callgirl business will become [an] even bigger, more enticing business in this city. Because prostitution is here to stay."

Reporter Dick Schuler, Calgary Herald Oct. 5, 1985, p. A5.

Introduction

In August 1987 the Canadian Association of Chiefs of Police announced in the annual report of the Organized Crime Committee that the crackdown on prostitution which had "aided police greatly in the control of visible prostitution" had inadvertently "created a renewed enterprise for Canadian criminals." The first major trend it suggested was the displacement of soliciting from the streets to the escort business. "Forced from the streets, the prostitutes are operating underground through the agencies". As a result, organized crime was regaining control of prostitution. It suggested that a crime ring operating in Edmonton and Toronto was grossing "millions of dollars annually and controls most of the 200 to 300 agencies in both cities".[1] This was reiterated in a front page piece in the Globe and Mail; "Crackdown on soliciting is boon for escort services".[2] No one seems to have considered that the massive advertising in the Yellow Pages and the system of municipal licences belies the characterization of this as an "underground" enterprise.

The theory advanced by the Organized Crime Committee is that the street trade had been driven outdoors by crackdowns on massage parlours in the 1970s, and that this outdoor trade had been recently attenuated by the new uptake of hookers into agencies in the late 1980s. "In Alberta, visible street prostitution is still low" but "soliciting continues to be a problem in Winnipeg" (p. 10). While we cannot speak for Edmonton, our own counts would suggest that Calgary continues to enjoy a flourishing street trade--at least as populous as that in Winnipeg. Consequently, the contention that the implementation of 195.1 has created a growth industry in escort services appears questionable. Also, the estimate of a ring of

[1] 82nd Annual Conference of Canadian Chiefs of Police Report, 1987, pp. 11-12
[2] Globe and Mail, September 28, 1987.

several hundred escort agencies grossing millions of dollars in Edmonton and Toronto appears generous. If we assume that Edmonton has one-fifth of the agencies (60), and if we assume that there are three to ten persons working out of each agency,[1] then Edmonton ought to have from 180 to 600 escorts--or 390 on average. For such an industry to develop from an embargo on street prostitution would require about three times the number of street prostitutes as police currently estimate. If that were true, street activity would be "low" indeed. We do not believe that the street trade has declined so dramatically, nor that this decline has resulted from the wholesale displacement of hookers to escort agencies--at least in Calgary. As will become evident, the City of Calgary leads the country in the development of municipal by-law regulation of off-street prostitution in the form of "dating" or "escort" services. What has been the situation regarding the escort trade in Calgary, and is there evidence of a displacement of street workers to agency work? To appreciate the current situation, we need to sketch the evolution of the current legal regime governing escort agencies in the city.

An Overview of Calgary's By-laws to Regulate Off-Street Prostitution

In 1973 Calgary's Chief City Licence Inspector received a request from "Cathy's Dating Service" encouraging the city to licence respectable and legitimate businesses such as dating agencies which matched single people who were trying to meet one another. The city refused to consider such a proposition since the costs would far outweigh the $50 business fees collected from each business.[2] Within 5 years the worst fears of legitimate dating agencies were realized as dozens of questionable businesses appeared in the form of massage parlours. The parlours were thinly disguised fronts for off-street prostitution. Legitimate European-style health spas and massage services were already licenced in the city. By 1976 there were twenty-three parlours with 200 massagists operating with such licences. Police investigations and arrests put an end to the growth of the illegitimate businesses--only nine licenced parlours with some thirty registered massagists remained after the crackdown.[3] One proprietor who operated four parlours was raided in 1977 and received a nine year sentence in 1979 for offences related to the operation of these businesses including both Criminal Code and tax evasion matters. In Edmonton a 1976 by-law created a steep $3000 licensing fee for massage parlours; the 30 existing businesses went scurrying into the unregulated escort trade rather than pay the high tariff.

In 1978 the Calgary Police Commission proposed a series of new regulations to plug the holes in the Massage Parlour By-Law and to extend the municipal

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[1] The report estimates "the average" number of prostitutes per agency "to be from three to ten", 1987, p.10.

[2] Calgary Herald, Sept. 26, 1973.

[3] Commissioners' Report to Legislation Committee, Calgary Police Commission, May 8, 1978.

licensing framework to cover other developing sex trade industries. By-law 135/78 was devised to "licence, regulate and control body painting studios, encounter studios, dating and escort services and model studios." The new regulations were adopted in September, and set an agency fee of $2,020 and an individual escort/model fee of $85. The rationale for the fee was not to create a financial deterrent, but to recover the costs of approving and inspecting the terms of the licence.

> "Actual costs relating to regulating and controlling the businesses listed will be recorded to determine future fees in accordance with Council's policy of recovery of actual inspectional costs" (Calgary Police Commission, September 11, 1978).

In Medicine Hat the city council instituted a $5,000 fee for escort agencies and a $350 fee for individual escorts in 1982 after the "Touch of Class" escort service was opened in Medicine Hat, as well as in Red Deer and Lethbridge.[1] Red Deer instituted a similar fee structure for licences and successfully convicted the proprietor, Allan Morse, on April 11, 1984 when he refused to pay the licence fee.[2] He was fined $1,000. The Morse decision is still viewed favourably in Alberta since the trial judge repudiated a series of constitutional arguments advanced to quash the by-law. There have been no similar challenges in Alberta since then, and Morse remains the only written judgment in this matter.

In Calgary the Police Commission introduced the first of three batches of amendments to By-Law 135/78 in July 1980 to deal with the influx of operators who were re-locating in the city after vigorous enforcement of the bawdy house laws in other provinces. Other amendments were to follow in 1984 and 1986. The 1978 by-law required that applicants obtain a letter of recommendation from the Chief of Police (or a representative). Screening of applicants was actually done (and still is done) by Vice detectives. The letter of approval was to ensure that known criminals were not granted business licences. Screening was also employed to exclude known prostitutes. By 1980 the growth of applications from persons outside the city made it virtually impossible for the background of persons to be carefully vetted. "The Police Department [was] further concerned that an organized crime ring...could flood this city with persons forced out of their present locations by Police activity in those centres".[3] On July 29, 1980 the by-law was amended to require that applicants be resident in the city for six months prior to making application. This would allow identification of potential prostitutes not only from

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[1] Alberta Report, January 9,1934.

[2] R. v. Morse, 1984, Alberta Provincial Court, Red Deer, unreported.

[3] Commissioners' Report to Legislative Committee, Calgary Police Commission, July 14, 1980, p. 63.

CPIC records--which are available Canada-wide--but also from local knowledge of the applicant and his or her background.

Under the licensing system there was a significant growth in the number of agencies. In 1979 there were three agencies; and by 1981 there were fourteen Although that number remained fairly constant thereafter. It was established at the trial of Robert Siegel in 1984 that the city police knew in late 1980 that at least some of the agencies were fronts for prostitution.[1] In Edmonton in 1983 twenty-two escort agencies were operating when Edmonton city council introduced that city's escort licensing by-law. The by-law was promoted by Police Inspector Edward Taylor, head of special investigations, who identified the escort business as a source of off-street prostitution. Like the earlier massage parlour law, the new by-law imposed an escort agency fee of $3000 and an individual escort fee of $85, making it the second most expensive licensing structure after Medicine Hat.

There were other problems associated with the off-street trade which brought about later amendments: (1) Until 1986 the Calgary agencies were only permitted to be open until 12:30 AM although enforcement of closing hours was extremely difficult; (2) there was a proliferation in the amount and kinds of advertising done by agencies; (3) there were fears of a movement of the agency premises to residential areas; and (4) there were several arrests of escort proprietors for living off the avails of prostitution.

The Hours of Service

In 1984 there was concern in the licensing and police departments that the agencies were running businesses all night--or at least well past the 12:30 AM closing time. The original law was careful to specify the individuals involved and the addresses of the businesses. But knowing who was involved and keeping track of what they were doing were different problems. It was not until amendments to the by-law in 1984 that the agencies were required to maintain all their phones on the business premises. Banks of different phones were being employed by individual owners who were advertising under dozens of separate phone numbers, many of which were in the private homes of the escorts and owners. Consequently, it was impossible for the police to monitor the agency calls to determine if escorts were being sent out after hours.

This problem was the subject of the 1986 by-law revisions which extended hours of operation to 2:30 AM. Although some felt that twenty-four hour operations should be licenced, the police recommended that calls after 2:30 AM might be from less than reputable individuals. They argued that the hours should be limited in the interests of the safety of the escorts, as well as in the interests of the

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[1] "Court Upholds Conviction" Calgary Herald, Oct 17, 1984.

police who might be involved in the inspection and regulation of the businesses. Twenty-four hour businesses might require similar hours of monitoring and regulation.

Advertising, Multiple Ads and Multiple Phones

In the 1984 changes, city council took care of another issue which had arisen in connection with after hour operations. Although individual operators were issued with single licences for their agencies, many were operating with multiple phone lines. In 1983 the operator of "Good Times Escorts," had advertised escort services under forty separate names and numbers--ranging from "Busy Beavers", to "BJ's Escorts" to "Mr. Lube"--making it virtually impossible for the police and licence departments to keep track of who was operating which businesses, and whether the businesses were all licenced. Rather than restrict the ability of entrepreneurs to promote themselves using whatever trade names they wished, the By-Law was revised to require a fourteen day advance notice of any new names being employed by the agencies. This would allow the police to better monitor the industry's advertising. In addition, the 1984 amendments required disclosure of the identities of company owners--sometimes numbered companies--in order to determine who was involved in the businesses.

Locations and Land-use

In 1984 there was a concern raised in Calgary City Council that agencies could operate from residential areas. Although all licences had been restricted to commercial/industrial land-use, application could be made by someone planning to operate an escort business as a "home occupation".

> "Approval of a home occupation requires consideration by the Approving Authority of such matters as increased vehicular traffic, on site storage and additional employees. If it can be determined that the home occupation will have a negative impact on the surrounding area, then an application may be refused. However, in the case of a simple telephone and desk operation, the specific business being transacted over the phone is not in itself a planning issue....The Land Use By-Law...is unable to legitimately prevent Dating and Escort Services as home occupations, so long as the business is restricted to a desk and telephone operation".[1]

In May the by-law was amended to prevent the issuance of a licence for an escort agency in a residential land-use area. The city already had such provisions for pawnbrokers, coin dealers and traders in secondhand goods.

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[1] Commissioners' Report to Legislation Committee, Calgary Police Commission, 2 April 1984.

Control of Agency Operators under Municipal and Federal Laws

The pattern of police enforcement of the escort business is interesting. The thrust of police work appeared to be directed towards the screening of applicants for agency and escort licences, although police also conducted sting operations to check compliance with the licensing provisions governing the businesses. Although the earlier municipal anti-soliciting by-law which created fines for soliciting was found ultra vires, city and police officials felt more confident that the current law, as a business law, was unassailable on jurisdictional grounds. This view was not completely shared even among those we interviewed who were adopting the Calgary model in the licensing department in Winnipeg. Are there grounds for believing that this municipal law is ultra vires like the previous one? In requiring police screening of applicants, the business regulations are perhaps unique in several senses.

First, police are not required to screen any other normal businesses in the city. Second, it is unclear why someone with a soliciting record, or any other criminal record for that matter, should be denied a letter from the Chief of Police if they are seeking a business licence--if in fact the business is legitimate. People who drink and drive are not prevented from running liquor establishments. We do prevent child molesters from subsequently frequenting school yards and playgrounds under the vagrancy law. However, for the most part, the criminal law does not create restrictions on convicted persons which are designed, over and above the original punishment, to prevent offenders from facing circumstances of similar temptations. Shop-lifters are not barred from stores--at least after being punished. Nor are they barred from acquiring licences to open and operate stores. And while private interests might refuse to employ such persons on the basis of their records, governments bound by the Charter have less leverage in preventing individuals from engaging in owner-operated businesses. In the Calgary licensing regime, the screening process which was designed to prevent individuals with previous records for soliciting from working in an off-street business as escorts raises issues of municipal discrimination based on a previous criminal record that may contravene the constitutional protection of equality before the law. Ironically, the criminal records of interest during screening usually result from soliciting--the very activity circumvented by the off-street contacts. And the activity whose suppression is ultimately the object of control, prostitution, which is an activity that might be facilitated by escorting, is not itself unlawful.

The by-law may be open to other jurisdictional and constitutional challenges. Consider the construction of municipal involvement in the regulation of the agencies as an attempt to enforce sections of the federal law regarding the direction of prostitutes and living off the avails of prostitution--a jurisdictional question. Consider the argument that the type of police approvals entailed in the acquisition

of an agency licence might make such businesses unequal before the municipal law. If these arguments are valid, constitutional challenges might be advanced both by prospective agents as well as by prospective escorts, and by aggressive defence lawyers on the jurisdictional and constitutional issues related to the law. This has not occurred in Calgary--at least to date.

On a more mundane level, the screening process is somewhat perverse since it is designed to exclude prostitutes, the sine qua non of the industry. The rationale here is self-evident--the city wants to prevent the uncontrolled proliferation of off-street prostitution but cannot be seen to be legislating a framework for the same activities which the federal law is trying to eradicate (control of prostitutes, living off the avails). However, the social objectives and the legal frameworks operate schizophrenically. This is true for both the municipality and for those the city would regulate. Thus, persons are allowed to front prostitution via dating and escort agencies, and everyone is aware that the advertising for "company" in the daily paper and in the Yellow Pages represents impersonal, commercial sex. In fact, the taxman who accompanies the detectives on the tour of the agencies is advised of the average financial returns of each "date" in order to evaluate the income reported by the escorts. The city lives with this arrangement by viewing the off-street prostitution as just another business.

Now for the rub. If the city tries to enforce its by-law aggressively, we believe, for the reasons we have outlined, it would be possible for an accused to challenge the city's fictions--"we--the city--are just regulating a business, your honour"--without the accused having to concede his/her own fictions--"we--the prostitutes--are just dating some lonely guys, your honour". However, the stand-off painted by this discussion is not what the city actually experiences. Such confrontation could happen, and the city would probably lose, at least in the legal sense. The agencies would also probably lose, although in the substantial sense, as the police "management" outlook, which we discussed earlier in the context of the strolls, was replaced by a crack-down policy directed at those controlling and directing prostitutes and living off the avails of prostitution.

In place of the picture which we have painted, there exists a very good relationship between persons in the escort business and the police. In our view this relationship probably explains why agents and escorts have chosen to "play ball" with the city under the terms of the by-law, rather than confront one another in court. The police management orientation has placed more emphasis on the regulation of the business dimension of the trade and has eschewed the moral issue. Unless complex undercover work is conducted, the participants themselves must approach the police for a crackdown to be mounted. Police do not view the situation as so pressing as to initiate undercover work without some initiative on the part of the escorts--since the business appears to be operating more or less

unobtrusively. As the Herald reporter said--"prostitution is here to stay"--and appears to be operating smoothly.

Performance of the agencies is subject to on-going surveillance. Sting operations are mounted usually once a month. Detectives rent a room in a motel and merely call for escorts and check their licences. They use the same hotel and do not appear to go to great lengths to disguise the operations. Agencies are required to identify everyone who is working--and they too are subject to a fine for sending out an unlicenced person. Over the past four years there have been eighteen by-law infractions against escorts and agents (answerable in the traffic court through fines of $300), as opposed to charges against four individuals for Criminal Code infractions of a much more serious nature. The Criminal Code charges require a different evidentiary basis than the by-law--particularly evidence from escorts about directions and control, living off the avails, versus the by-law infractions of working after hours, operating without a licence, failing to keep the books as prescribed, keeping pimps off the premises, etc.

In recent years, the major criminal charges involved the following. In 1984 an escort proprietor was jailed for two years for operating an escort business whose profits were made from prostitution. Another was arrested in the same year for living off the avails of prostitution; he skipped his bail and is still wanted on a Canada wide warrant. In 1985 a third proprietor was sentenced to eighten months imprisonment for living off the avails. The latter earned $15,000 in six months from fees paid to him by clients and escorts to arrange "introductions". For this service, the agency generally charges a $30-$40 fee paid half by the client and half by the escort. Individual escorts would negotiate a fee for sex privately with the client. In 1984, the escorts were earning $150 for straight sex .[1] Two more recent Criminal Code cases involved female agents charged with control of prostitutes and living off the avails. In all instances where police have pursued the agency operators under the Criminal Code the cases were initiated, at least in part, by the escorts themselves. Some of the proprietors were notorious for ripping off their employees. One interviewed prospective employees "horizontally", deducted a ten percent charge for credit card billings, and was billing the women up to $130 a week for advertising. Five former escorts testified against him at his trial. As a Herald writer put it: "His real crime was that he tried to con prostitutes".[2] In other words, the policy which appears to operate in Calgary is that if both parties stick to their roles and if there are no complaints from members of the public or from the agency workers, the arrangements are allowed to happen without intervention by police. The By-Law allows police to screen persons moving into the business and to monitor their subsequent business activities on a day to day basis if need be. The

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[1] Calgary Sun, April, 1, 1984, p. 2

[2] Dick Schuler, Calgary Herald, Oct 5, 1985 p. A5.

Criminal Code allows them to act where victimization occurs after the businesses begin operating, thereby side-stepping the jurisdictional weakness of the municipal regulations.

Revisions to the By-law

We have only highlighted the major points of contention in past versions of the municipal law. In 1986 the original By-Law 135/78 was repealed and replaced by By-Law 34M86. Some of the changes we have not identified include the following:

1. The law was extended to cover "encounter sessions" and "encounter studios"--operations designed to relax, comfort or soothe the client. However, the only licences actually granted have been for escort services.

2. Revisions required that escort businesses record the name, location and phone number of all clients who called for service as well as the times of the requests for services and the fees charged. Also, the name of the escort dispatched, the time of the dispatch and the time of the acknowledgement call recording the escort's arrival at the address all must be written down. In the case of on-premise services, the agencies were required to record the name and address of the clients, the times of arrival and departure, the sort of services provided, by whom and for what fee. Since no massage or encounter licences have been issued, only the former regulations have actually been implemented.

As of 1987 the City of Calgary issued formal, hard-bound accounting books to all agencies. These books are pre-paginated and contain separate entry columns for all the information required by the by-law, including financial details of the agency fees. This system of record keeping was made possible since the by-law provides that the agencies shall keep records in whatever manner the licence inspector sees fit. The ledger book replaces all existing accounting systems, including computer systems, and is subject to random checks. Agency operators are required to make entries for all calls received, whether escorts are sent out or not, and the books are deemed to be the sole record of business transactions of the agencies. After establishing the common record keeping system, Vice detectives visited all the agencies in the company of a representative from Revenue Canada to explain procedures for filing income tax. Failure to maintain such books is a ground for suspension of the licence and/or fines, or, ultimately, for the revocation of the licence. The financial and service accountability associated with the book-keeping requirements has probably introduced a level of uniformity and revenue accountability that is probably unique in the escort business in Canada.

In the same interests of control, the city introduced a new guideline in 1987 to prohibit the use of call-forward devices. The directive from the licensing

department prohibited call-forwarding, phone-pagers and call-receivers. However, this appears to be a "grey area" since agencies still contact escorts via pagers after receiving direct calls from customers. The police fear that such electronic communications may allow the clear control patterns currently in practice to be circumvented, and for the escorts to find themselves working in locations that are not formally noted and which may, as a result, be dangerous.

3. Licences have been made non-transferable. In the past, individuals who were screened out by a police check attempted to buy an interest in a licence obtained from someone who had passed such screening. This is no longer acceptable.

In a related provision, anyone with a financial interest in a licence must be identified. The sale or transfer of shares in the companies owning licences have to be registered. Managers as well corporate officers also have to be identified, and all escorts currently associated with an agency are required to be listed in the office of the agent.

4. In 1986, fees were increased to $3,600 for agencies and $95 for individual escorts/models/therapists/paintees as the case may be, although as noted above, the only businesses actually licenced have been the escort services.

5. The law forbids any sign or advertisement that "indicates that the premises is a place that offers any form of sexual favours, sexual gratification or sexual intercourse." In the same vein, it prohibits the distribution of any card or advertising which "indicates that the service provided includes any form of sexual favours, sexual gratification or sexual intercourse." In point of act, the ads contain virtually no direct references to sexual services. And finally, the owners/operators/workers are not to "permit, suffer or allow any member of the general public who has entered the business premises to disrobe while therein."

6. Penalties upon summary conviction for infraction of the by-law are fines of $300 minimum to $2,500 maximum or, in default of payment, up to sixty days imprisonment. Subsequent offenders face minimum fines of $500 or, in default of payment, up to six months imprisonment.

With the facade of legitimacy, the escort businesses could advertise services in the phone book and the Calgary Sun newspaper. In the spring of 1986 the Sun began to record in their daily ads the licence number of escorts or agents placing the notices. The paper had expressed to police misgivings about placing notices which might subsequently be found to be prostitution--or juvenile prostitution. The creation of the municipal by-law legitimated the ads from the perspective of the newspaper, and narrowed their moral responsibility by allowing persons to advertise who were already licenced by the city despite the common knowledge from stories in the same media that such ads were fronts for prostitution. In the

same harmonious vein, the business licences allowed the escorts to ply their trade with some legitimacy in the institutional eyes of the city, the police and the department of revenue. The escorts were able to acknowledge their dates formally by telephone after arriving at an address in a way that the street workers could never do to ensure their safety. The clients also experienced some heightened sense of civic legitimation since they were merely letting their fingers do the walking through the Yellow Pages--and the telephone company, like the newspaper, was only advertising what was already a recognized municipal service. And finally the police and licence inspectors were given the authority to overview prostitution under the guise of monitoring a business. This complex, mutual legitimation appears to be unique in Canada.

Extending Control: Clearing Exotic Dancers

In 1986 the City also enacted a By-Law 47M86 to regulate and licence exotic dancers and exotic dance agencies. In 1985 and '86 police became concerned that some dancers were also working as prostitutes. The by-law complemented the escort law by providing a mechanism for identifying the dancers and agents and determining their backgrounds. Consequently, the by-law approach has provided a powerful municipal framework for monitoring the various sex-related industries in the city in the sense that it provides for a process of monitoring the activities of persons involved in, or suspected of involvement with prostitution, provides for screening of applicants, for the identification of business owners and individual practitioners, for identification of business addresses, and facilitates the taxation of earnings arising from such activities.

Estimating Changes of Activity: Advertising and Licences versus Services

We return now to our original question--the possibility of displacement of street prostitution by escort prostitution. In order to determine whether there had been a shift in business from the strolls to the agencies, we examined patterns of advertising in the Calgary Sun, and the Yellow Pages, and tracked the numbers of licences issued for agencies and escorts over the period in question. These are relatively crude measures. Advertising tells us only how much money is spent on promotion--which is different from the number of promoters, or the overall profitability of the industry. Changes in the numbers of agencies tells us how many companies are in the field. Changes in escort licences tell us how many people are working. What this does not indicate is any change in the amount of business--the number of consultations or introduction fees. Nor would it ensure that escort increases resulted from declines in the numbers of street hookers. As noted earlier, one of the police guidelines for refusing to support an escort application is that "the applicant has worked as a prostitute for the last twelve months or associated with prostitutes."

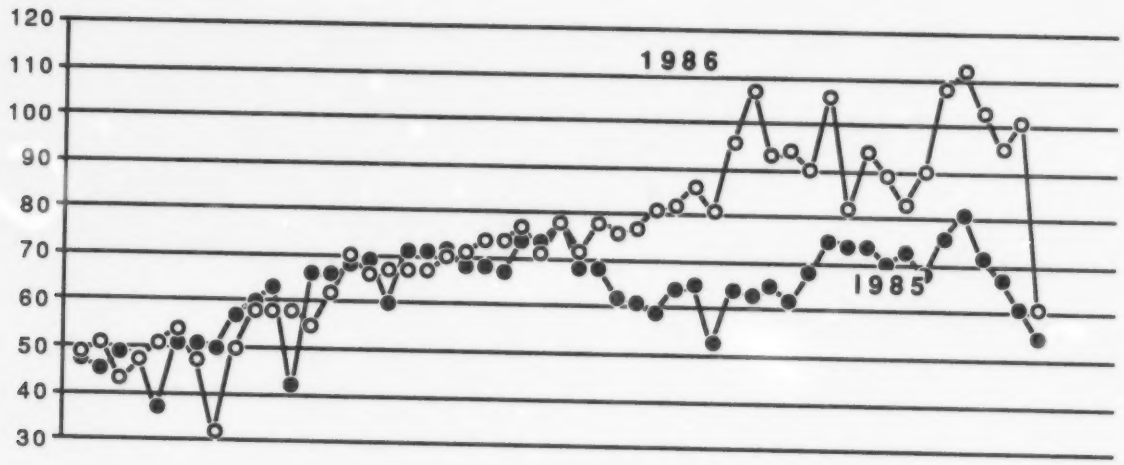
Given these limits what can we infer? The best indicator of changes in the levels of business would be a financial audit of the industry, particularly a measure of changes in the actual numbers of calls to agencies before and after C-49. We do not have access to such information. We can nonetheless estimate the trends. If the agencies operate on the same financial bases as other industries, we are probably safe in finding that increased advertising, increases in the numbers of agency licences and increases in the numbers of escorts reflect a greater profitability in the off-street trade. This inference would be fair, particularly in the longer run. However, even if such correlations were established it would not follow that C-49 caused them. Causality can only be inferred from the timing of changes in the off-street and on-street sides of the business.

Advertising

In Calgary the only daily paper which carries ads for escort agencies is the Calgary Sun. We examined the number of ads placed during 1985 and 1986--the year before and the year after the change--in order to determine whether the amount of advertising increased. We counted the number of ads on every Friday and Sunday issue over these two years. The results are presented in the following two charts. The first shows the trends for all the Fridays in 1985 and 1986; the second shows trends for the Sundays. Each week is treated as an individual datum point. The number of Friday ads varies between a low of 37 on February 1 and a high of 81 on November 29 in 1985. Comparable figures in 1986 are 32 on February 21 and 112 on November 28. The average number of Friday ads in 1985 was **63.5**; the comparable figure for 1986 is **76**. The distributions suggest two points. First, there are seasonal trends in advertising. Advertising declines during December, remains low through the winter, and increases during the fall. This is true for both years and for Fridays and Sundays alike. It probably also reflects the fact that licences are frequently taken out only for the second half of the year. The second point is that in spite of the seasonal variations, the 1986 trends show significantly more ads, particularly during the fall of 1986. As we shall see, the number of escorts also jumped during 1986.

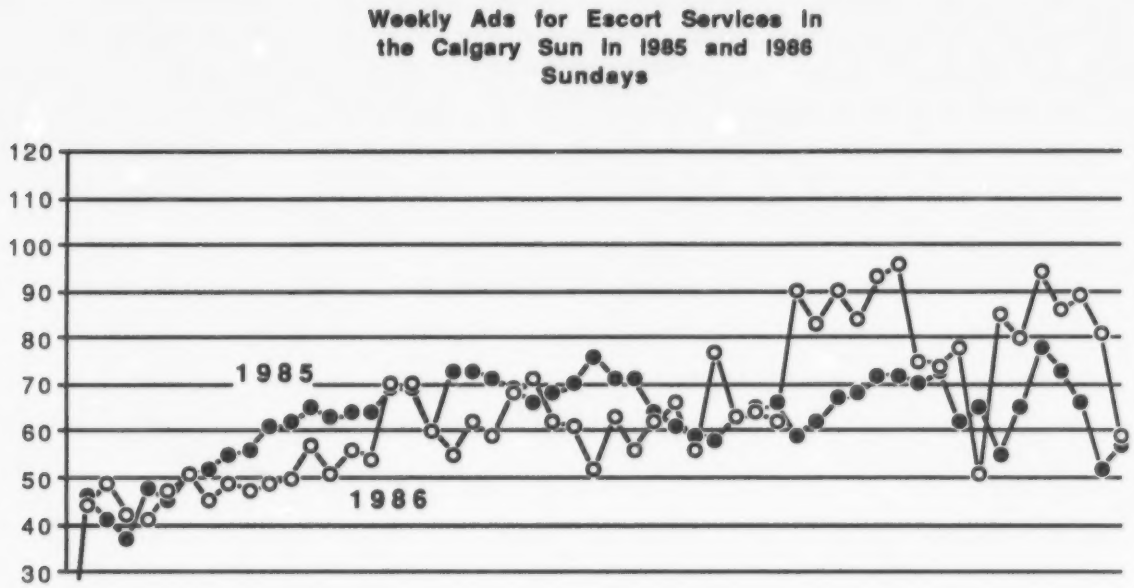
Chart 7.1

Weekly Ads for Escort Services in the Calgary Sun for 1985 and 1986 Fridays



By way of clarification it should be pointed out that the tables show the trends from the first week to the last week of the year. The individual datum points represent the number of ads on the Friday from the first week of the year on the extreme left hand to the last week of the year on the extreme right hand of the chart. The data from 1985 and 1986 are superimposed on the same chart, the1985 trends shown as a solid dot, 1986 as a circle. Chart 1 shows the trends for ads on Fridays. Chart 2 represents the Sunday ads. The number of ads placed on Sundays were consistently lower. Nonetheless, the seasonal variations and the differences between the two years are still evident in the Sunday chart. The increase in the number of ads in 1986 is also impressive in light of the requirement to include the escort and/or agency licence number. Even with this informal regulation, the ads increased.

Chart 7.2



The second area of advertising we looked at was in the Alberta Government Telephone Yellow Pages for Calgary. The trend here did not mirror the increases in newspaper advertising--quite the opposite. We examined the number of "individual" agencies listing separate telephone numbers, and the number of columns of advertising in the years 1980 to 1987. The numbers here suggest a

Table 7.1

Ads for Escort Services in the Calgary Yellow Pages

	No of Ads	Columns of Advertising
1980	5	2
1981	10	2
1982	17	8
1983	37	18
1984	80	25
1985	93	35
1986	54	8
1987	38	10

dramatic growth in advertising through the early '80s which peaked in '85. The trend is the same for both the agency and the column counts. Notably, the changes

do not confirm the trend regarding the boost in advertising observed in the Calgary Sun. The phone book advertising in terms of both the number of lines listed and the columns of advertising space peaked in 1985 and has declined dramatically thereafter. What about the number of individuals involved in the "service" side?

Licences Issued by the City of Calgary

How many licences for agencies and for escorts have been issued by the City of Calgary? We obtained records back to 1979--the first full year after the 1978 by-law created the licences. In the following table, we show the annual number of agencies, as well as the annual number of individuals who obtained escort licences.

Table 7.2

Number of Agencies and Number of Escorts Licenced in Calgary 1979-1987

	Agencies	% Change	Individual Escorts	% Change	Escorts Per Agency
1979	3	--	17	--	5.6
1980	14	466	50	294	3.5
1981	14	0	111	222	7.9
1982	15	7	112	1	7.5
1983	15	0	125	11	8.3
1984	14	-7	119	-5	8.5
1985	18	28	133	12	7.4
1986	18	0	173	21	9.6
1987	16	-11	135	-22	8.4

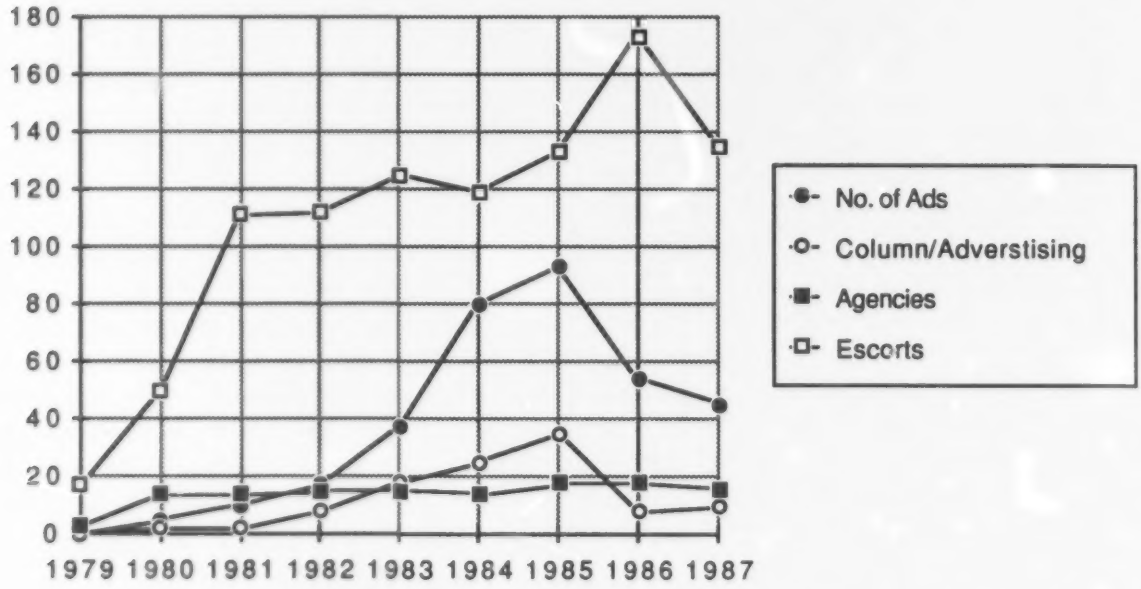
Most of the growth in the number of agencies was in the first few years. The figures show that the number of agencies has grown although only moderately between 1982 and 1987. The number of individual escorts shows a similar dramatic increase in the first two years. However, it has also climbed sharply, particularly in 1984 and 1985 as the figures for annual percentage change indicate. While there is no pre-and post-1986 breakpoint, it is plausible that the licences became valuable during the period when Fraser submitted the results of the special committee report on pornography and prostitution, and when parliament began discussing the government's new legislation in this area. Even allowing for the merits of this speculation, the number of agency licences increased by only four. In contrast, the 1987 Chiefs of Police report mentioned hundreds of new agencies. On the escort side, anxiety over a clampdown on street soliciting may have persuaded prostitutes to seek licences even before C-49 became law. However, the gain in 1986 is off-set by the decline in 1987. Forty new licences were issued in 1986--the year of Bill C-49, but these disappeared completely in the subsequent year. Consequently, the legal pressure anticipated in 1985 appears to have been reversed in 1987.

Overview of Patterns

We have identified changing patterns in the amount of advertising in the Yellow Pages (number of ads versus number of columns) as well as changes in the numbers of both escorts and agencies. Has the industry as a whole thrived after the pressure on the streets? The Organized Crime Committee's report to the Canadian Association of Chiefs of Police argued that Bill C-49 drove prostitution underground into the escort businesses. Our data support the claim, but only in the most tenuous way--there is evidence of more prostitutes working as escorts with licences in Calgary in 1986, and of increasingly more escorts per licence. The change in numbers is consistent with the probable impact of C-49. However, this appears to last for only one year. Also, the increase in the number of agencies--from fourteen to sixteen--is hardly the mushrooming that the report implies. Since all but one of the Calgary agencies are owned by former escorts, it is more probable that a handful of individuals already associated with the business applied for their own licences.

If the new escort licencees were former street prostitutes, how did they get around the regulations barring street prostitutes? There is an addition of some forty new licencees between 1985 and 1986. Who are they, and where did they come from? and do they represent forty former street solicitors? We asked the Vice

Chart 7.3. Escort Licences, 1979-1987



detectives how they accounted for the fluctuation in numbers. Although they could not account for why so many new applicants were approved, it was their view that

these were not former street prostitutes known by the city police. They suggested that changes in the economy might be relevant, but why such a change would effect 1986 in particular is unclear.

In conclusion, the returns to prostitution in the escort business have not increased. The number of agencies has been relatively stable for eight years. Yellow Page advertising is down as are the number of persons holding escort licences. This appears to reflect the larger economic picture in the province. The off-street trade has not benefitted from a closure of street activity--since there has been little evidence of any dramatic decline of soliciting in the streets. Both sectors of the business are down, and law enforcement appears to be a secondary factor to the economy.

VIII. MEDIA ANALYSIS AND COMMUNITY REACTIONS IN CALGARY

Introduction

The study of the Calgary media comprises an examination of the articles, reports, editorials, and Letters to the Editor contained in the Calgary Herald and the Calgary Sun from February 1982 to September 1987. These sources were obtained from the clipping files of the respective newspapers, supplemented by our own archival research into periods of time when the prostitution issue was a 'hot' one, and for periods when the files were not complete or extant. The examination concerns the media coverage of prostitution nationwide, as well as provincially and locally. The organizing device has been chronological by section, divided into periods of time which were made distinct by the issues raised in the media.[1] In addition, we have included major radio talk shows for which we acquired tapes, and interviews with persons employed by hoteliers, businesses and convenience stores adjoining the strolls. We have included this latter material as part of the community reaction to the problem of prostitution which is organized and assessed as part of this chapter.

There are several gross trends in newspaper reporting that can be summarized here. First, the number of prostitution-related stories in both papers grew per annum from 1982 through 1985, and then declined in 1986 and 1987. The Herald had twenty-five stories in 1982, rising progressively to seventy-two in 1984 and sixty-nine in 1985, and declining to thirty-five by 1987. The Sun had twenty-five in 1983,[2] rising to forty-seven in 1985, and declining to thirty-six in 1987. Moreover, both papers had a decidedly seasonal bias in their reporting. More than seventy-five percent of their stories on prostitution were published in the first half of the year, and the bulk of those were in the first three or four months--in between Christmas and the N.H.L. Playoffs. This suggests that prostitution as a subject was being studied and reported in a period of relatively slow news and circulation conditions. However, it is difficult to provide a simple reductionistic account of news in a community. Attempts to view the newspapers as a sort of governmental report card tend to trivialize the focus of the events and issues which exercise profesional journalists and editorialists. Consequently, in this chapter we have tried to do little more than an overview of the thrust of news coverage of prostitution at different points in time.

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[1] All material is from the two newspapers--which are only noted where knowledge of which newspaper is important to the information; material from other sources is noted separately.
[2] This was the first full year of its publication in Calgary.

The stories within the prostitution subject area which were reported appear to fall within four distinct subjects. First, the news media in Calgary was driven by national events, such as the Fraser Committee convening in 1983, its report in 1985, and the subsequent debates in parliament. Second, the media was driven by prostitution problems which arose in other Canadian cities, particularly Vancouver, Edmonton and Toronto. Third, these developments gave rise to a local reporting industry that became concerned with stories of "the life" in Calgary, which comprised interviewing runaways, battered wives, incest victims, and old veterans of the profession in a biographical style befitting figures of an alternative society. And fourth, the media reported on occasion the work of the local Vice Unit, and trials of prostitutes which contested city by-laws or federal legislation. The remainder of the media coverage concerned wire stories from around the world on bizarre events in the life of prostitution.

We have organized our observations on a year by year basis from 1982 to 1987. Though Bill C-49 is a federal law, Calgarians were concerned with the ability of police to control prostitution at a municipal level several years in advance of the new changes to the federal law. What were the events which the newspapers covered during this period, and what evidence was there of a collective perspective on the issues? Over the six year period, the newspapers chronicle the failure of municipal by-law efforts, the rise of federal initiatives to study the problem (the Fraser Committee), the formulation of the new soliciting law, its implementation by the police and the record of its performance in the courts. Though our record of the news coverage may appear unsystematic, this impression is inevitable given our interest in describing the stories which made up the news. It is also difficult to compress several years of media history into a short discussion without sacrificing some of the complexity of all the stories which appeared.

1982: The Year of the By-Law

Considerable attention was given in the winter of 1982 to the plight of women involved in prostitution, both male and female, and on the decriminalization of the business. The focus of this attention was a visit to Calgary in February by Margo St. James, co-director of the National Task Force on Prostitution in the United States, which resulted in a series of interviews between a Calgary Herald reporter, and male and female prostitutes. The argument of St. James that was put forward forcefully in the paper was that the criminalization of prostitution, which was directed chiefly against women, perpetuated the belief that women were second class citizens. She also put forward the view that organizing the women into informal unions would enable them to counteract the associated problems of pimps and drugs. The reporter's interviews centered on male and female runaways, aged

twelve to fourteen. Published under the general title of "An Invisible Problem",[1] the interviews concluded with a report of a television documentary on teenage prostitution in Alberta entitled, "Who's Tricking Who". It was suggested by the producers--Kensington Motion Pictures--that Calgary had the potential to rival Vancouver in teenage prostitution. This was corroborated by a statement of Family Court Judge Peter Leveque that both Calgarians and their social workers were ignoring the problem because of its lack of visibility.

Later that month, the Alberta Court of Appeal reinstated the city's controversial street offences by-law, which had been enacted in June 1981 and made "loitering" for the purposes of prostitution a nuisance with a maximum fine of $500, and had been ruled unconstitutional that October by the Provincial Court. On February 26, Police Chief Brian Sawyer announced that the Vice and Drug Squad would not attempt to use the law, but would allow the prostitutes to leave the streets voluntarily.[2] His announcement was supported by Mayor Ralph Klein, but local female hookers interviewed said that it would be business as usual. It was pointed out, however, that the by-law was not directed against the business, but only against certain irritating forms of behaviour in soliciting which were a nuisance to citizens. Chief Sawyer, however, said the decision was a shot against the Federal Liberals in Ottawa; instead of the government having no place in the bedrooms of the nation (Prime Minister Pierre Trudeau), the bedrooms of the nation would have no place on the streets of Calgary. In April, Federal Justice Minister Jean Chretien announced that the House of Commons Justice Committee would make a major review of the prostitution problem aimed at revising the criminal law on the subject.[3]

That spring witnessed the Calgary police's first stings under the by-law, which netted fifty-three charges, forty-seven of which were against female hookers, two against male hustlers, and four against male customers. The Calgary by-law, it was reported, was now considered a model by law enforcement officials in Vancouver, Edmonton and Winnipeg.[4] On May 3, however, criminal defence lawyer Tony Managh, who had fought the Calgary by-law before the Alberta Court of Appeal, announced that his law firm--Stinchcombe and Associates--had appealed the decision at its own cost to the Supreme Court of Canada, which accepted the appeal on May 17. Managh received maximum publicity when he declared that the by-law was a dictatorial tactic reminiscent of the regimes of Joseph Stalin and Adolf Hitler.[5] The mayor and police chief replied that the streets were now under control,

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[1] The Herald, Feb. 13, 1982.
[2] "Prostitutes Given Chance to Quit Streets," The Herald, Feb 26, 1982.
[3] "Commons will Study Soliciting," The Herald, April 24, 1982.
[4] "Anti-Prostitution By-Law a Model for Other Cities," The Herald, April 13, 1982.
[5] "Lawyer's Attack Upsets Klein," The Herald, May 3, 1982.

and that the by-law had proven to be successful in containing the business on the behalf of citizens concerned with harassment. The city held that the bylaw was a lawful use of provincial jurisdiction to control a "widespread" nuisance, and the defence held that it was directed against prostitutes and thus fell under the domain of the federal criminal law.

In the meantime, in spite of denials that the police were "hooker-bashing", by June 4 they had laid 153 by-law charges against female hookers. According to the manager of the Calgary Downtown Business Association, there were now less hookers on the street and the situation had stabilized.[1] This success was later confirmed by interviews with workers of the Palliser and the International hotels in 1988. The summer proved to be a non-contentious one with regards to female hookers. Mayor Klein joined his colleagues in Vancouver, Toronto and Niagara Falls in a joint presentation to Justice Minister Chretien for federal legislation to preserve local law enforcement.[2] He was told, however, that the government would now await the decision of the Supreme Court in the Calgary case before proceeding.

The one problem which erupted that summer, however, concerned the male hustlers. A petition signed by 545 residents in the area of the male stroll on 13th and 14th Avenues SW, being largely apartment managers and tenants, complained of the heavy traffic and noise until the early morning hours caused by the men. According to South Calgary Properties Ltd., they were losing tenants because of the problem.[3] The police chief responded that "this is the age of individual human rights", and they could do nothing about it. A new homosexual club at the corner of 13th Avenue and 4th Street SW was considered to be the source of the problem. Residents were told to write to their MPs.

That autumn, the Vice Unit reported that an increase in the unit to fourteen men had enabled the police to reduce the numbers of women on the downtown stroll on 3rd and 4th, and 9th and 10th Avenues SW, to thirty, and that the increased manpower and successful undercover work for stings under the by-law had moved many women out of the city. In the last two weeks of October, 144 female hookers were charged, bringing the total for the year to over 400 by-law charges, of which half were still before the courts awaiting the resolution of the city's by-law in the Supreme Court of Canada.[4] In December, the Supreme Court reserved its verdict to the new year, which would involve the question of the city's jurisdiction, as well as the rights of individuals under the Charter of Rights. In the meantime, the police shifted their focus in the winter of 1982-83 from prostitution to other areas under

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[1] "Prostitute Arrests Increase Despite Crackdown Denial," The Herald, June 4, 1982.
[2] "Klein Lobbies Chretien over Prostitution," The Herald, June 8, 1982.
[3] "Police Say Hands Tied on Male Prostitution," The Herald, July 23, 1982.
[4] "Police Await Prostitution Verdict," The Herald, Dec 2, 1982.

Part V of the Criminal Code, namely bookmaking and procuring, and operating illegal gaming clubs and brothels. The vice squad reported in January the arrest of sixteen women and seventeen men for bawdy house charges in a Macleod Trail motel.[1]

1983: The Call for Federal Initiatives

January 25 witnessed several parties on the streets of Calgary's downtown strolls, as women celebrated the Supreme Court's verdict striking down the Calgary by-law.[2] All existing charges were dropped, and the mayor, police chief, and editorial writers now put the problem at the feet of Ottawa, and demanded federal legislation. Fears were raised with the Calgary Sun sporting banner headlines such as "Red Light!" and "Hooker Homecoming",[3] stories carrying "Yes we can!" buttons, and a news story on two pimps who were arrested for using an employment office to hire hookers.[4] The Calgary Herald also reported that half of the murders and attempted murders in the city were related to prostitutes and pimps. Several hookers interviewed in the Herald said that the by-law actually had scared many dates away from the strolls. The court's striking down of the Vancouver by-law received almost equal press coverage, together with the hundreds of charges that would be now withdrawn in both cities. In fact, stories highlighting "hundreds of elderly women" in Vancouver who were allegedly being harassed and intimidated by hookers predominated the Herald's coverage of the subject.[5] Chief Sawyer predicted that the hookers would be out on the streets of Calgary in great numbers once spring arrived.

Mayor Klein and his urban colleagues in Vancouver and Niagara Falls appealed to the new Justice Minister Mark McGuigan for federal legislation, and received a reply from his parliamentary secretary that the department would now move quickly on prostitution.[6] The Justice Committee's proposals were reported on March 28, which recommended that an offer to engage in prostitution in a public place be a Criminal Code offence with a fine to $500 or fifteen days in gaol. The proposals were attacked not only by women's rights activists in Ottawa, but also in Calgary by criminal lawyers and the Editorial pages of both the Herald and the Sun.[7] Thus the Calgary Police Commission, against the direct advice of Chief

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1 "Police Have less time to Control City Prostitution," The Herald, January 20, 1983.
2 "Prostitutes Likely to Reclaim Streets," The Herald, January 26, 1983.
3 "Hooker Homecoming," The Calgary Sun, January 27, 1983.
4 "By Hooker, By Crook," The Calgary Sun, February 18, 1983.
5 "Prostitution Debate Rages in Committee," The Herald, March 3, 1983.
6 "Anti-Hooker Law in Works," The Herald, February 23, 1983.
7 "Women to Fight Plans for Hooker Crackdown," "Committee Misses Mark on Prostitution Debate," The Herald, March 28, 1983. "Prostitution Attacked," The Herald, March 31.

Sawyer, formed a committee on May 26 to study additional ways of controlling prostitution in the city. The following month, the federal minister's proposed amendments making buyers and sellers of sex liable to criminal prosecution were reported, together with the formation of Paul Fraser's committee on prostitution and pornography.[1] The Calgary police said the amendments did not go far enough, and editorial opinion in the Herald was pessimistic that the federal committee would produce in the end any tangible legislation.

That summer the two newspapers took very different approaches to the prostitution subject. The Herald concentrated on stories concerning problems with the law stemming from the proposed legislation, the progress of the Fraser Commission, and the problems of prostitution throughout the world from Southam news correspondents in Ottawa, Washington DC, London and Paris.[2] The Sun, however, featured a diet of news stories with titles such as "Let's Get Tough", and stories on the evils of prostitution in Canada.[3] The latter included an account of how the mayor of Niagara Falls swept its streets of hookers by taking pictures of them and their customers and threatening to publish them,[4] and of an Edmonton twelve year-old who was arrested hooking in Los Angeles.[5] By Autumn, both papers were denouncing the proposed legislation as full of loopholes, and "giving a green light to prostitution"--taking their cue from the Association of Canadian Police Chiefs' annual convention in Calgary which reiterated its plea for tough legislation.[6]

Notably, the press did not report on, or discuss, prostitution in the city throughout the summer, nor in the autumn. Whatever was or was not happening on the streets of Calgary simply was of no concern to the media. It was becoming more interested in reporting developments in other areas of the country, and of bizarre international episodes. For example, the formation in Toronto of the Alliance of Concerned Residents on Street Soliciting was reported in September[7], Montreal's new anti-soliciting by-law in October[8], and the death of San Francisco's five million dollar bordello queen in November.[9]

A major series of articles appeared, however, at year's end, kindled by the issue on December 7 of the discussion paper of the Fraser Committee on the

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1 "Prostitutes Pondered Yet Again," The Herald, May 27, 1983.

2 "Criminal Code Changes Weak, Critic Says," The Herald, July 15, 1983.

3 The Calgary Sun, June 27, 1983.

4 "Snap! Call Girls Gone," The Calgary Sun, August 4, 1983.

5 "Girl's Ordeal," The Calgary Sun, September 19, 1983.

6 "Sex Bill 'Green Light' For Prostitutes," The Herald, June 24, 1983.

7 "Toronto Citizens Organize," The Herald, August, 1983.

8 "Soliciting Law Passed," The Herald, October 19, 1983.

9 "Madame's Final Trick," The Calgary Sun, November 24, 1983.

increase of child prostitution and pornography. The Sun made a meal of the subject, with bold headlines of "Kiddie Sex", "Pimps Prowl Schools", "She's Killing Herself", and "Child Hookers", all in the two weeks before Christmas.[1] Reminiscent of "The Battle of Alberta", Calgary stories were always out-grossed by Edmonton ones, with the proviso that 'this could happen here'. Stories of twelve year-old Edmonton girls filling the streets, and making $200-$300 a night, were stated as normal facts of life in that city.[2] The Herald, however, was not as alarmist. It covered the views coming out of the Fraser Committee on the efficacy of municipal by-laws such as those of Calgary, the possibility of licencing as an alternative of dealing with the problem, and a special feature on the proposed creation of a new halfway house in the city for teenagers who turned to prostitution by The Brothers and Sisters of Christ--an interdenominational lay order. The House would follow the philosophy of Alcoholics Anonymous, and the new American "tough love" approach, and have guard dogs and tight security.[3]

1984: The Year of Fraser

The Fraser Committee met in Calgary on January 9-10, and heard submissions from a number of local resident groups and city officials. Both newspapers highlighted on January 10 the impressions of the committee members on visiting the downtown female strolls: one of shock in seeing strolls where there was no central public visibility, and few hookers on the street.[4] The juveniles who allegedly joined the business were, according to the police, turned over to social service agencies. The only real concerns were noted in the second day's stories: the problem of pornography. This was highlighted by reports of the YWCA's Women Against Violence, The University of Calgary Women's Club, and community and church groups.[5] An associate pastor of the Calgary Christian Centre brought his own cheering section to the meeting, and proclaimed that "anything that excites sexual stimulation outside marriage should be banned."[6] The Sun's editorial on January 13 advised Calgarians to lobby for federal regulation of the pornography industry, and for legislation to move prostitution off the streets.[7]

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[1] The Calgary Sun, December 9, 11, 12, 1983.

[2] "Child Hookers," The Calgary Sun, December 12, 1983.

[3] "Halfway House to Help Young Prostitutes," The Herald, December 26, 1983.

[4] "Feds Tour Hooker Row," The Calgary Sun, January 10, 1983; "Prostitution Panel Takes to the Street," The Herald, January 10, 1984.

[5] "Pornography Attacked, Backed," The Herald, January 11, 1984.

[6] "Panel Hears 'The Word'," The Calgary Sun, January 11, 1984.

[7] "Freedom of Choice, " The Calgary Sun, January 13, 1984.

Both papers used the visit of the Fraser Committee to make prostitution one of their major subjects of media attention for the following two months. The Sun now continued its earlier reporting of sensationalized aspects of the business with articles on teenage girls working the streets because they could not find other jobs, twelve to fourteen year-old runaways who were turned onto the streets by force from violent pimps,[1] and prostitutes who were beaten up to pose for hard-core pornography films for a million dollar syndicated crime business.[2] It also covered the emerging prominence of escort agencies on February 19, which were required to have special permits to work out of homes as well as business licences.[3] The paper ended this series with reports on the trial of the "king" of Calgary escort services in early March, who with another operator was convicted for living off the avails and jailed for two years.

The Herald opened its series with a major, full-page study of hookers entitled, "Surviving on the Street".[4] The series concentrated on interviews with the older, established women on the 2nd and 3rd Avenue strolls, and contained a chilling yet realistic account of 'The Life', depicting women such as the "half-frozen sentry who has put duty ahead of survival". The study brought several Letters to the Editor in the following days, ranging widely from women who were concerned with the plight of other women, to Christians debating prostitution in the Scriptures and the legend of Mary Magdalene.[5] It also brought some reports based on interviews of hookers, who spoke openly of using the dialogue to say that they were going to "put away" customers who sexually assaulted them.[6] Women's groups spoke of hookers as victims who came from home backgrounds of physical and mental abuse, and alleged more than eighty percent of them had been victims of incest. This heightened interest in the 'life' caused the Herald to cover the prostitution 'crisis' in Vancouver and Toronto on an almost weekly basis.

The Herald also began to cover prostitution-related cases before the Calgary courts, including massage parlours, escort agencies, hookers and pimps. For the first time in the decade, Calgarians were receiving an itemized account of the implementation of the Criminal Code on prostitution in their city. The more prominent coverage included the trial of an allegedly million dollar massage parlour ring.[7] There was also, however, intensive coverage of the law and alternative lifestyles. City police and councillors expressed satisfaction with the new

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1 "Forced into Prostitution," The Calgary Sun, February 1, 1984.

2 "Officials Say Criminals Control Sex Industry," The Calgary Sun, February 8, 1984.

3 "Escorts Need Special Permits," The Calgary Sun, February 19, 1984.

4 January 7, 1984.

5 "Customers As Much a Problem," The Herald, January 22, 1984.

6 "Prostitutes Press Fight Against Sexual Assault," The Herald, January 12, 1984.

7 "Prostitution Kingpin Nabbed," The Herald, February 16, 1984.

by-laws for escort agencies, which included licensing fees for the agencies and their individual workers, and close regulations and reporting procedures.[1] Reporters extolled the virtues of the new halfway house, Exodus I, which had just been established by the interdenominational group and was receiving its first juvenile hookers.[2] And Calgary's Mustard Seed Church on 10th Avenue SW, patterned after the Baptist's Burning Bush coffee house for runaways in Victoria, was praised for bringing another home to the city for teenagers on the street.[3]

That summer, the local press again said virtually nothing about the prostitution subject in Calgary. But it reported heavily on the West End War in Vancouver, the Street War in Edmonton, and the "infestation" of prostitution in Toronto. Calgarians had a steady diet of news on the West End Wars throughout the summer, culminating in a full-page spread on the "hooker ban" which was upheld by the B.C. Supreme Court, with Chief Justice Allan McEachern becoming a hero.[4] There was a report on August 25 of the problem of too many hookers chasing too few customers, and the problem of congestion on the street corners of the downtown female stroll which led to the abduction of one of the women by competitors.[5] The summer's reporting closed on September 22 with a special full-page feature by a woman reporter on "Gentlemen of the Night".[6] A study of the women and men of the escort services, the study viewed them as persons who served a very needed social function in a city with a stressful environment, where hassle-free talk and play provided essential therapy for its citizens.

The autumn too brought little news of the Calgary scene, especially after the city's by-law on escort agencies was upheld by the Alberta Court of Appeal on October 15. The Sun reported occasionally on 'special cases around the world', such as Edmonton hookers hit with counterfeit bills,[7] a new share offering in Nevada for a bordello endorsed by the mayor of the town,[8] $1200 a night call girls in New York,[9] and a trial before the British high court on taxing the income of hookers.[10] And the Herald continued its reporting of the occasional cases tried before the city's courts. The paper's major focus, however, was on The Halifax Story: the Attorney General's posting the names of forty-seven prostitutes obtained

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1 "Policy Unhappy with Escorts," The Herald, February 4, 1984.
2 "Exodus I Offers Hope to Young Prostitutes," The Herald, March 28, 1984.
3 "Parish Work Dangerous for Preacher," The Herald, April 4, 1984.
4 "Hookers 'in danger', " The Herald, June 26, 1984.
5 "Hookers Remain Night Problem," The Herald, July 19, 1984.
6 The Herald, September 22, 1984.
7 "Hookers Hit with Bad Bills," The Calgary Sun, June 10, 1984.
8 "Dream Investment," The Calgary Sun, November 5, 1984.
9 "Happy Hookers," The Calgary Sun, October 18, 1984.
10 "Unhappy Hooker Battles Taxman," The Calgary Sun, November 9, 1984.

from sheriff's notices to lamp-posts in downtown Halifax, and suits against the government for the violation of rights to privacy by nine of the women.[1] The names of the forty-seven were also published in The Daily News. The city's injunction against the women to curb their business was later thrown out by the Nova Scotia Supreme Court.

A poll reported from the federal Justice Department that only twenty-four percent of Westerners considered prostitution a major problem, perhaps even exaggerated the views of Calgarians by the end of 1984. As corroborated by later interviews with workers in the downtown strolls, the prostitution issue for the media had become simply one of human interest and not of vital concern. People believed that control of the business was in hand, with alternatives taking place, and that a balance between the philosophies of laissez-faire and heavy law enforcement had been achieved in spite of the malaise and uncertainty which stood as a permanent plague in Ottawa.

1985: A Proposal for Control--Bill C-49

The decline of concern over prostitution in the city continued into the winter of 1985. All the Sun could find for human interest was the legendary Chicken Ranch eighty miles outside of Las Vegas which had moved there in 1978 and inspired the movie, "The Best Little Whorehouse in Texas".[2] According to the proprietor, half of his customers came from Canada, and a third of those (some two hundred) were Calgarians. The perfect male retreat for those cold Canadian winters.The Herald followed up its earlier stories on 'The Life' with an account of how some of the hookers who had been interviewed earlier had left the street and entered the straight world.[3] Both papers reported the Fraser Committee's inability to meet its deadlines.

The month of April was a propitious one. First, both papers highlighted the work being done by Exodus I, and its movement to a larger house on 3rd Avenue SW next to the downtown stroll.[4] In addition, the Sun did a feature full-page study of the halfway house, with biographical sketches of the young people who entered it, and accounts of its twelve step Survivors Anonymous programme. Second, the Fraser Committee report, which was issued to the public on April 23, received major coverage in both papers. But their major focus was on the pornography

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[1] "Names Posted in War on Prostitutes," The Herald, November 30, 1984.

[2] "Locals Flock to U.S. Brothel," The Calgary Sun, January 25, 1985.

[3] "Ex-prostitute Tries to Start a New Life," The Herald, February 21, 1985.

[4] "Street Exodus," The Calgary Sun, April 21, 1985; "Group Moves to New Home," The Herald, April 10, 1985.

sections.[1] For prostitution, the Herald was reservedly congratulatory, considering the making of solicitation illegal a step forward, but cautious on the chances of successful implementation.[2] The Sun was more critical. In a lead article, it called the report "schizophrenic": arguing on the one hand to make prostitution legal with cooperative brothels, and on the other hand to make soliciting illegal. Justice Minister John Crosbie was advised to throw it out.[3] The paper was, however, more favorable to the provisions on pornography, and on child pornography and prostitution in particular, and to the three-tiered approach for penalties. A Sun columnist satirized the report, and called it "home cooking" for hookers.[4]

On May 2, Justice Minister Crosbie brought in the long awaited bill for prostitution, C-49. The reaction in the community from the pages of the press was positive. The members of the city council and the police commission, the mayor and police chief were all supportive. The Bill was characterized as a "tough law", and one providing a "middle ground"; even a spokesman for the Alberta branch of the United Church gave it a "discreet acceptance".[5] Several hookers who were interviewed said that they would accept the law because it provided them for the first time with a measure of security. Several criminal lawyers, however, said that it was a dangerous threat to the freedom of speech, and would prove difficult to enforce.[6] City alderman Larry Gilchrist said that prostitution should be removed from the Criminal Code and passed over to the control of municipalities, and the Editorial sections of the two newspapers shared this point of view. The Sun argued further for the licensing of hooker cooperatives,[7] and the Herald counselled more consideration for comprehensive legislation to deal with the whole problem of prostitution.[8]

The summer's news on the prostitution front once again included Calgary as well as Vancouver, Edmonton and Ottawa. Reports of hooker wars in Vancouver and Victoria, pimps and hookers jailed in Edmonton, and the political machinations of politicians in Ottawa grabbed a lot of headlines. So too did reports of Status of Women groups that the law would cause chaos in the courts.[9] Crosbie's claim that the Bill would "clear the streets of prostitutes" was taken skeptically by both papers,

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1 "Report to Usher in Smut Attack," The Herald, April 23, 1985.

2 "Report Invites Study," The Herald, April 24, 1985.

3 "Fraser Report Schizophrenic," The Calgary Sun, April 24, 1985; "Its Unacceptable," (editorial) The Calgary Sun, April 24, 1985.

4 "Home Hooking's Really Cooking," The Calgary Sun, April 26, 1985.

5 "Churches Split on Fraser," The Herald, April 25, 1985.

6 "Fraser report Labelled Threat to Freedom," The Herald, April 26, 1985.

7 "Legal Hookers on the Way," The Calgary Sun, June 10, 1985.

8 "Problems Will Persist," (editorial) The Herald, May 3, 1985.

9 "Reaction Predictable to Prostitution Bill," The Herald, May 4, 1985.

and a Sun columnist wrote that "the law is an ass".[1] In Calgary, the problem was seen as increasing due to hookers of other regions coming to the city where they would be relatively undisturbed. Hookers interviewed by the Sun reported a price war, with too many hookers chasing too few customers, and more crazy and weird customers than they would like.[2] The police reported on June 20 that the numbers of women on the stroll had doubled.[3] In the meantime, Exodus I had to abandon its halfway house because it was condemned by the fire department as unsafe.[4]

Having survived a new hot summer in the soliciting business, by autumn the media was viewing the draft Bill C-49 with more approval. But it predicted a long struggle for the Bill in the courts, given the stated opposition of the Canadian Bar Association, and said that a review within three years was an absolute necessity. The Herald alone reported the details being debated in the Commons Committee pertaining to Bill C-49 in September and October, giving good coverage to the veiled women of the street who protested against victimization, and to the various groups such as the Civil Liberties Union and others who challenged its legality.[5] The paper also reported fully on the gang warfare that erupted in Saskatoon in late October between pimps for control of the strolls.

Meanwhile, in Calgary the Vice Unit was now calling for the city licensing of male and female exotic dancers, even though one of the city's better known dancers lost her appeal against a $1000 fine for performing an indecent theatrical act--i.e., propelling ping pong balls from a part of her anatomy. The hookers, however, were sounding their warning shots. A member of the Vancouver's Alliance for the Safety of Prostitutes came to organize Calgary's Women Reclaim the Night march, and the Bill was condemned by the Canadian Advisory Council on the Status of Women, and a spokesperson for the Calgary Alliance for the Safety of Prostitutes.[6] The march garnered a hundred supporters, and was given a full page story in the Herald.[7]

In November, while Bill C-49 was going through its final stages in the Commons and the Senate, the Calgary police upgraded their enforcement of prostitution related activities prior to the Bill's coming into effect. The press reported several arrests and prosecutions of bawdy house and escort service owners--who received eighteen-month jail terms on conviction, and on November

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1 "Tory Anti-Hooker Law Defies Reality," The Calgary Sun, September 20, 1985.

2 "Hooker Strip," The Calgary Sun, July 10, 1985.

3 "Prostitute Numbers Double, Police Say," The Herald, June 20, 1985.

4 "Exodus Seeks New Home," Calgary Herald, August 17, 1985.

5 "Anti-Hooker Bill Called Threat to Freedoms," The Herald, September 10, 1985

6 "Women's March to 'Reclaim Night'," The Herald, September 14, 1985.

7 "Women Walk for Street Safety," The Herald, September 21, 1985.

19 the police made their biggest sting in years when they charged twenty-nine women under the bawdy house law.[1] They also reported that applications for escort licenses had increased thirty-three percent over the past six months in a bid by hookers to move their business off the streets.[2] They warned the women publicly that they would enforce the new law to the limit, unlike the police in other cities. An officer interviewed in the Sun said that they would take a tough approach to any woman who made the slightest signal to a potential customer: "We'll certainly be picking them up".[3] In another story, an officer also said that the women would no longer be able to do their business over calls in sidewalk telephone booths. The police emphasized this public campaign in a full-page story in the same paper entitled "Calgary Vice",[4] which featured a series of vignettes in the life of the Calgary Vice Squad, Miami-style, with its "macho' image, dressed in blue jeans and leather jackets, "dealing in human agony".

On December 1 1985, and on the eve of the implementation of the new law, Herald Editor, William F. Gold, wrote a critical editorial, citing the "hypocritical morality" of the debate, questioning the law's widely ranging powers and its legality, and suggesting that it would soon be out of date.[5] And that week the Calgary strolls had their lowest counts of women in modern times, down to twelve on the major downtown stroll at night. One of the women who was interviewed on the street said that they would all be back in tow after the New Year, and that little would change because of the law. As the evidence from the strolls indicated in a previous chapter, she was not far wrong.

1986: Applying the New Law

In the first week of January, both newspapers reported on police advice that most of the city's hookers had either fled the land or headed indoors to conduct their business. The Herald also reported that the Vice Unit would now turn its efforts equally to cleaning up the city's escort services--especially those with sexually "explicit" advertisements.[6] At the same time, a spokeswoman for the Alliance for the Safety of Prostitutes said that as soon as the new law came into force there had been an increase in the number of violent sexual assaults of hookers by customers, who believed that they could now act with impunity against women

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1 "Hookers Charged in Vice-Squad Sting," The Calgary Sun, Nov. 19, 1985.
2 "Hookers Seek Haven," The Calgary Sun, Dec. 4, 1985.
3 "Hooker Crackdown: Cops Get Tough," The Calgary Sun, December 20, 1985.
4 The Calgary Sun, October 27, 1985
5 "Public Has Right to Fear Anti-Prostitution Law," The Herald, December 1, 1985.
6 "Police Warn of Explicit Escort Ads," The Herald, January 6, 1986.

who were outside of the law.[1] The Alliance drew up a "bad trick sheet", but was not heard from again. Spokespersons for the "Calgary Alliance" appear to be members of the Vancouver Alliance who work occasionally in Calgary.

Following this onslaught in the media, the press became relatively quiet on the subject through the spring. There were reports on the progress of test cases of the new law in Vancouver, and on the creation of a national fund to challenge the law in the Supreme Court of Canada. The Vice Unit in Calgary, when asked why there had not been any arrests, said there was a current shortage of manpower.[2] Thus the first sting was not conducted until February 6, when twenty-two were netted. The first hooker was prosecuted under the law on March 20, when she confessed and was convicted, receiving a fine of $350 and a year's probation.[3] Two weeks later the Provincial Court convicted the owners of the La Concha Motel of keeping a common body house, fining them $5000 each, and two women as inmates $500 each.[4] The first male customer was arrested on March 7; tried on April 31, he was convicted and fined $400 for communicating on the street with an undercover policeman.[5] The police had reported earlier that male customers could expect $2000 fines and their names in the paper.

It was not, however, until another four months that the press reported a second sting under the new Bill on the night of June 12 (nine male customers had been arrested in March). Twenty-six women were arrested, the story relating that the purpose of the operation was to let the women know that they were "reinforcing the fact that the law still exists".[6] The next night they arrested nine male customers. In the meantime, the dire warnings of the punitive nature of the legislation were still being reported. An editorial in the Herald reiterated the fines of $200 or six months in jail for working women, the drop-off in customers, and the increase in bad tricks. The Vice-President of the Elizabeth Fry Society lambasted the Bill in a speech as a "political" law that will have no influence on the business and its problems.[7] And criminal defense lawyer, Tony Managh, said that "communicating for the purpose of paying for sex was no worse than talking to a friend about paying for a cup of coffee," and that he would be launching a Charter case against the Bill.[8]

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[1] "Anti-hooker Law Slammed for Increasing Violence," The Herald, January 2, 1986.

[2] "No Charges Laid Under Hooker Law," The Herald, January 24, 1986.

[3] "Prostitute First to be Sentenced Under New Laws," The Herald, March 21, 1986.

[4] "Bawdy House Keepers, Fined, Jailed," The Herald, April 2, 1986.

[5] "Man Pleads Guilty Under New Anti-soliciting Law, " The Herald, May 1, 1986. The story inaccurately reported that the accused, a journalist, solicited a female decoy. Police records reveal the target was a male policeman on the gay stroll.

[6] "26 Taken in Hooker Dragnet," The Herald, June 13, 1986.

[7] "Hooker Legislation Under Fire," The Calgary Sun, June 13, 1986.

[8] "Lawyers Cite Charter in Anti-soliciting Case," The Herald, June 20, 1986.

As summer and Stampede arrived, the press now took up the local prostitution problem, and this time with even more sympathy with the business. A full-page study of "Teen Hookers" appeared in the Herald, striking out at the pimps who enslaved them, and concluding that the new law made life for the women even worse.[1] The story reported the police view that most child prostitutes had been removed from the city streets a year ago, which was contested by representatives of social service groups who said that there were still dozens of them in Calgary at any one time. A Sun article, "Hookers Living Dangerously", concerned the brutal murder of Elaine Krausher, a Calgary prostitute.[2] An interview with her partner related how the business was turning kinky since the advent of the Bill, and attributed the murder to it. This theme was corroborated in interviews on the progress of Exodus I--which had been relocated again for failure to pay city taxes and bailed out by the Catholic Diocese, and of the Mustard Seed House, both of which received full-page stories.[3] The Herald contained a major story on a hooker who was physically assaulted on the street. A woman who was passing by assisted her, went to the police to press a charge against the man, and was dissuaded from doing so because it would be too much work . . . "easier to leave these poor street people alone."[4]

The violence associated with prostitution continued to expand in press coverage into the autumn. The first major case reported concerned two bawdy house brothers who sued the city of Calgary and a police detective in the Court of Queen's Bench for $4,275,000 on September 22. They alleged that they were "entrapped" into allowing hookers to patronize their motel so that they could "keep an eye on them", and that the police bust had interfered with their business.[5] The second major case involved Judge Gary Cioni of the Provincial Court striking down the federal statute against soliciting. He held that "there is no rational reason that the established freedom to speak of prostitution under quiet circumstances should fall to disturbance, nuisance and violence on the street."[6]5 An Edmonton Provincial Court judge came to a similar conclusion on the same day.

The reaction to the striking down of C-49 was consistent in both papers. The Sun suggested that the bogeyman should be buried, and the business legalized and controlled. It also called for an immediate review of the legislation.[7] The Herald

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[1] The Herald, March 9, 1986; also, "Teen Hookers," The Calgary Sun, July 18, 1986.
[2] The Calgary Sun, July 25, 1986.
[3] "Refuge Offered to Prostitutes," The Herald, June 30, 1986.
[4] "Prostitution as Social Issue Ignored," The Herald, April 17, 1986.
[5] "Bawdy House Brothers Sue City and Cop," The Calgary Sun, September 23, 1986.
[6] "Court Rules Law Invalid on Hookers," The Herald, September 26, 1986.
[7] "Time to Decide," The Calgary Sun, September 26, 1986.

concurred, stating that the decisions were victories not only for hookers and their clients, but also for society: "protection against sloppily drafted legislation."[1] Canadians deserved more than "gag" laws which infringed an individual's fundamental freedom of expression. A month later, on October 28, the police reported that they would now cease any further enforcement of the Bill.[2] The prostitution issue then slowly dropped from the media.

Media responses to the new law were interesting. When the Fraser Committee had suggested that prostitutes be allowed to work out of their own homes, the editorial pages registered shock. The Sun printed "Its Unacceptable."[3] Yet when a new law was proposed in 1985, editorial writers in December of 1985 and January of 1986[4] characterized it as menacing legislation. When the law was later struck down in 1986 by the provincial courts, the media appeared to greet this news positively. In 1986 public reaction to the law was probably tempered by the fact that the police did not make any arrests until February 6, 1986--six weeks after the law was proclaimed, postponing any backlash from both feminists, and editorial writers. However, it would be wrong to conclude that the public was against decriminalization but not in favour of legalization, since there were frequent suggestions in both papers that the state ought to license prostitution in one or another forms. Legalization appeared tobe a sound option.

The only conclusions we would draw from this is that Calgary public opinion--at least as gauged by opinions raised in the newspapers--is not noticeably mobilized against prostitutes per se, that there does not exist a continuing, acute land-use conflict like those which were reported in news stories from Toronto and Vancouver, and that the law did not produce a simple positive or negative effect. When the police power of arrest under section 195.1 was restored in 1987 after review by the Alberta Court of Appeal, there was virtually no discussion in the media about the law from any of the legal or community interest groups. Whatever had exercised the Police Commission in its presentation to the Fraser Committee in 1984 had become a non-issue in Calgary in 1987. Prostitutes were being arrested--their rights having been duly reviewed--and the inference of the ordinary reader was that everything was operating according to plan. Lawyer Tony Managh had departed Calgary, and there was no legal spokesperson to mobilize opinion one way or the other. In addition, the numbers of arrests were modest in comparison with those in other Canadian cities, leaving the public impression that police action was commensurate to the community circumstances.

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1 "Hooker. Public Winners When Law Struck Down," The Herald, October 4, 1986.

2 "Court Appeal Puts Anti-soliciting Law on Hold," The Herald, October 28, 1986.

3 "Its Unacceptable," (editorial) The Calgary Sun, April 24, 1985.

4 "Public Has Right to Fear Anti-Prostitution Law," The Herald, December 1, 1985."New Legislation Grants Police Sweeping Powers," The Herald, January 30, 1986.

1987: The Demise of Prostitution Issues

The world of Chicken and Mustang Ranches south of the border, of international hooker conventions and Prostitutes' Alliances, and of Calgary's strolls, escort services and pseudo-bawdy houses, was now a thing of the past. They no longer seemed newsworthy in the local press. There was some reporting of the police cracking down on the hustlers after their arrest of three of them in March on the 13th-15th Avenue stroll. But the only other news that remained to be reported, and studied, included the continuing increase of sexual assaults and violence against female hookers, the fear and spread of AIDS, and the now ancient saga of prostitution wars in Vancouver and Ottawa.

The strongest theme which emerged from the press was the linkage between prostitution and sexual diseases, and the concomitant necessity of decriminalizing soliciting for the control of AIDS. As the Sun put it, we condone, legalize and control gambling and abortion, and to do so for communicating prostitution services in public would be "relatively wholesome".[1] As hookers continued to disappear from the streets as "missing", society should do no less for its living than it has done for its dead.

On July 15 the Alberta Court of Appeal reversed the judgment of the Provincial Court against Bill C-49, and the law was now back into circulation. The press, however, gave the appeal a low profile, as did a CBC talk show, "Wild Rose Forum", in the following week. The Forum was greeted by the public with its phone lines virtually empty. Lawyer Marvin Moore, who defended the hookers in the Appeal, outlined the law, his view of why it should be disallowed, and how legislation simply had not worked to combat the problems associated with soliciting. The police called in, however, and admitted that the only problems they found with soliciting was (1) too much traffic on the hustler stroll on 14th Avenue SW, (2) the uncomfortable situation faced by women office workers who had to cross the female stroll on 2nd and 3nd Avenues SW, and (3) the hassling of hookers by male drivers and customers. The police said that they had not done much when the law came into effect because they considered it to be "business as usual", thereby controverting their public campaign of October '85 to February '86. Their real concerns were two-fold: the necessity of a good law for juvenile hookers--to arrest them and move them off the streets before they became 'hooked' on the business, and the necessity of cracking down on the pimps who exploited the women. They cited several arrests and trials of pimps as steps in the right direction.

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[1] "Legalize Hookers-Now," The Calgary Sun, January 8, 1987.

The callers, while few in numbers, were fairly consistent in their answers and observations. The question of the day was: "What if anything should be done to control prostitution on the streets of Calgary?" Two ex-veterans of the business called in to say that there were never any hassles in the past, but there were under the new law. Women in general were against the Bill and the criminalization of any aspect of the business. There was also strong support for the ability of men or women to practice the business of their choice without interruption from the state. Their one concern was the provision of regulations concerning sexual diseases and AIDS. The President of the Inglewood Community Association called to protest against the business which was spreading down 9th Avenue SE from the National Hotel (a complaint which the stroll observations largely failed to corroborate). A later interview with her successor found it no longer a pressing issue.

Male callers were uniformly against the Bill, and against any attempt to legislate against the business; they believed it was a waste of taxpayer dollars. A Born Again Christian, however, said the business should be outlawed because it went against the Scriptures.

Interviews with workers in the hotels and businesses along Fourth Avenue SW between 1st and 6th Streets--adjacent to the downtown stroll, and with parking lot attendants on 3rd Avenue, were generally unconcerned.[1] Clerks in the Mac's Convenience Store on the corner of 4th and 6th said the hookers were good customers, and seldom abused the premises. Workers in the Calgary Centre and International Hotels said the stroll behind them was no major concern, except for the noise and congestion late at night. The Westin employed a guard at the lobby entrance to keep hookers from entering the building, and its security officer stated that the hotel did not accept them in the interests of its guests. Any hooker found in the hotel would receive a warning not to return under the Petty Trespass Act. Some of the parking lot attendants were less less impressed with the stroll, saying that the traffic at night was a deterrent to families who stayed at the hotel and had cars to park; they also recommended improved lighting on 3rd Avenue. Most of these people, moreover, wondered what would happen to the stroll once the office buildings undergoing construction were completed. A few of them suggested that it could not exist in a commercial environment, and that perhaps the problems of the early '80s--when the stroll was on 9th Avenue SW--might reappear.

Conclusions

In conclusion, the evidence from a study of the media suggests that Calgary's interest in legislating prostitution, soliciting, or communicating for the purposes of prostitution, was a passing fad that was occasioned first by the federal court's

[1] These interviews were undertaken in November 1987, and April 1988.

striking down of the city's by-law concerning loitering, and second by the creation of the Fraser Committee. Once the press gave its citizens a full diet of the world of prostitution, and the police made their requisite public stings, the subject ceased to become one of major interest or concern. Indeed, general interest passed even before C-49 was struck down by the Provincial Court, and its resuscitation by the Court of Appeal and forthcoming challenge in the Supreme Court of Canada were not enough to revive public interest. In the end, Calgarians seemed to accept prostitution and its various outlets as part of the frontier spirit of rugged individualism that still stamps itself upon the region. There were continuing concerns in the media, but these were more closely related to the problems of teenage lifestyles, sexual assault and AIDS, which are more pervasive and go far beyond the interests of the law in the enforcement of soliciting.

Finally, several points can be made about the media's coverage of prostitution in the city. First, the subject was one which quickly became exploitable, and in which serious editorial consideration became the exception. Second, the news was not really 'event' driven from a local perspective, since most of the reporting reflected problems in other cities and countries, and the Fraser inquiry and its subsequent history. Third, the issue of prostitution, once exploited, soon became a non-issue in the city, one lacking the public pressure and concerns that leads to the formation of public opinion and community action.

If it is possible to predict the future from some knowedge of the subject matter, which we believe it is, we would predict that future Calgary media attention in 1988-1998 will concern land-use issues in the area north of the city core, south of the Bow River. This area is undergoing development, and is slated for a number of specific projects. Where the conflict in land-use has arisen with the Eau Claire Apartments in the past, completion the of YMCA in the fall of 1988 and of the craft market facilities in the old City of Calgary Transit Bus barns in 1989 will return the issue of street prostitution to civic concern when prostitutes, male customers and members of the more general public find themselves in one anothers' presence on 2nd Avenue SW.

IX. BILL C-49 AND SOCIAL SERVICES IN CALGARY

Introduction

In 1987, the Alberta Department of Social Services and Community Health was split into two separate branches--community health and social services. Alberta Social Services have operated a single, consolidated provincial policy for welfare, and continued to administer a number of provincial acts such as the Child Welfare Act, Family and Community Support Service Act, and various other legislation dealing with care for the elderly, the blind, and dependent adults. In addition to operating the provincial welfare scheme, in 1987 the Calgary Region of Social Services operated a social services crisis unit, and contracted social service work to a number of private agencies which deal with abused spouses and children, runaways, and street kids. The province also financed much of the municipal costs for family and child services. We interviewed individuals in the Provincial Department of Social Services and the City of Calgary Social Services Department, as well as persons in the agencies to determine (1) if there had been any noticeable movement of street hookers onto welfare roles since the introduction of Bill C-49; (2) if the agencies had experienced an increase in demand for services from persons engaged in prostitution, and whether this was due to the law; (3) whether the agencies had any knowledge of the magnitude of the problem of adolescents engaged in prostitution, whether programs existed which were designed to provide services to such persons, and whether there had been changing demands for such services as a result of the law.

Welfare

In estimating the impact of the Bill on the numbers of persons seeking social assistance, spokespersons for Provincial Social Services pointed out several things. First, since the number of persons receiving assistance in the Calgary Region in 1987 was about 22,000, it would have been difficult to detect the influx of a small number of new cases in 1986 and 1987 resulting from the application of the new law. If every prostitute in Calgary had been compelled to seek social assistance, then the system might have detected a change, though even this would barely constitute one-half of one percent of the Calgary Region caseload. Second, before they could qualify, prostitutes, like other applicants, would have to liquidate all but $50 of their possessions--aside from their furniture, but including their cars. The officials thought that the prostitutes would be unlikely to do this. In fact, we know from police arrest records that no consistent pressure was applied on the street which might lead to an exodus to welfare. Third, any monies they earned over $115 per month would need to be reported, and unless they had stopped working entirely, they would be defrauding the plan if they failed to report this. If they were working successfully, they would earn this practically every night. Fourth, since

all persons receiving assistance also receive special medical cards for provincial medicare, the fact that they were working as hookers--and on welfare--would be evident to their doctors, and, consequently, would probably be reported to the province. The officials admitted that some persons engaged in prostitution might be on social assistance--and that persons engaged in selling their bodies would probably not be above "knocking over Social Services for a couple of hundred dollars a month." However, the same officials were extremely sceptical that the Bill had any measurable effects on provincial social welfare costs. Given the pattern of policing, this appeared a realistic assessment.

The Child Welfare Act and Control of Adolescent Prostitutes

The Department of Social Services administers the Child Welfare Act and works with the police in monitoring and treating adolescents involved in prostitution. Under this Act, persons under eighteen can be controlled by a provincial guardianship agreement if, as a result of evidence presented before a court, it is established that the child is in need of protection to ensure the child's survival, security or development. However, sixteen and seventeen year-olds who are living on their own can "sign off" by establishing that they do not require psychiatric or other sorts of care, or other forms of provincial assistance. However, those under sixteen may be held in secure treatment facilities if they are suffering from a mental or behavioural disorder, if they present a danger to themselves or others, and if it is necessary to confine them to remedy such conditions. The Act requires that those confined be given treatment and that the sort of treatment be specified in the secure custody certificate approved by the court. The law also limits the period of confinement to five days on an initial order, sixty days on a first renewal, and ninety days on a subsequent order--each of which requires court approval.

In the past, social workers have used secure treatment certificates to hold juvenile prostitutes since, it was argued, they were presenting a danger to themselves by working on the streets, and jeopardizing their survival, security and emotional development. Social services officials noted, however, that these sources of control generally applied only to those under sixteen, since, as noted above, a sixteen or seventeen year-old prostitute who was functioning normally in other respects could decline a guardianship agreement. In addition, the time limits on the secure treatment orders, and the treatment requirement, made it difficult to confine and change the behaviour of someone who was persistent in choosing to work as a prostitute. Indeed, they were aware of cases under the previous Act in which protective custody, as it was then known, proved futile in rehabilitating determined adolescent prostitutes. The introduction of greater due process safeguards in the new 1984 Act has made it very difficult to lock up "street wise" kids simply because they were misbehaving. In the past, hundreds of adolescents found themselves

confined for this reason. Under the 1984 Act, the Department only maintained contracts for sixteen secure treatment beds, and was actually using only six to eight places in 1987. Such facilities have a high psychological or psychiatric component, and operate at about $250 per day. Consequently, social workers are reluctant to use them, and the courts have made it more difficult for them to be employed simply as a form of incarceration.

In spite of the limited ability of the Act to be employed to control adolescent prostitutes, officials at Social Services expressed the opinion that there did not exist a serious problem in Calgary in 1986 and 1987 with respect to juveniles working as prostitutes. This view was based on their feedback from several community committees involving a network of contacts between social workers, city police, prosecutors, RCMP officers and various agency workers. In addition, the Department was spending some $266,000 annually on five treatment centers for sexually abused children and adolescents, and caseloads from these centers gave no indication of a juvenile prostitution problem. If such a problem arose, we were advised that the Department would readily get involved, develop protocols for treatment services, and would fund agencies to offer services--as it had done in the case of family violence. There have been no grounds during the period of our study to suggest that Social Services had received evidence of a problem in the area of adolescent prostitution requiring intervention.

The Department also has been funding a project operated by the Boys and Girls Club of Calgary known as "Avenue Fifteen." This is an emergency shelter for children which operates a seventeen bed, co-ed facility for twelve to seventeen year old Calgary youth. Avenue Fifteen is located near the gay stroll in south-west Calgary, and is on call twenty-four hours per day, every day of the year. In 1987, it was operating at a cost of $340,000 annually. The facility provides temporary care and counselling services for adolescents who have left home, and develops case plans to re-integrate the young people into their families. The vast majority of adolescents who have presented themselves for counselling have been involved in fights at home, have been abused by parents, or have run away for other reasons. Only a handful of the seven hundred adolescents who were through the program in 1985-1988 had been involved in prostitution, though many were involved in shoplifting, and breaking and entering. A related youth program for older adolescents, Joint Orientation Measures for Youth, or "JIMY", also provides counselling to youth in trouble. Workers in neither program reported having any grounds to think that juvenile prostitution is a serious problem in Calgary, that it has gotten any larger over the past several years, or that it has been affected in any way by Bill C-49. This was confirmed by the Mustard Seed Church, a Baptist denominational ministry located near the city core in south-west Calgary. Over the past two years, the Church has worked with only about one juvenile prostitute annually. As of 1988, the Church was developing a program to place runaways in

responsible homes to create alternatives to involvement in theft, drugs, booze and prostitution. Finally, the Calgary-based volunteer organization, Child Find, has never had requests to locate runaway children who had become involved in prostitution. Child Find's work consists overwhelmingly of parental abduction cases. However, they have found "a couple" of adolescents in the past several years who had been reported as missing, and who were found working as prostitutes.

Municipal Services

The City of Calgary Social Services also has had experience with juvenile prostitutes, particularly in the context of probation and child care. In the past, the city operated an adolescent detention facility under funding from the provincial Attorney General, and secure treatment facilities at the Children's Service Center under provincial Social Services funding. Many young prostitutes who had been charged with soliciting found themselves under the care of city social workers and probation officers, and the facilities were known to have been successful in rehabilitating many adolescents involved in hooking. As of 1988, the city had moved out of the detention and secure treatment business, but continued to offer probationary services to adolescents under the age of sixteen who were either convicted in the Youth Court, or diverted from the Court as a result of an alternative measures order. The older cohorts, the sixteen and seventeen year-olds, have come under probationary services of the Solicitor General's department. And as of April 1988, the city and the province were holding discussions to determine whether the province would continue to fund municipal probationary services at the level which would allow the city to staff positions with qualified social workers. These changes have come about as a result of the reforms of the provincial Child Welfare Act, and in the Young Offenders Act--both of which follow a more rigid, due process approach, and which, many social workers believe, make intervention for the purposes of treatment more difficult.

Exodus and the Provision of Services to Prostitutes

In 1986 and 1987 there was no prostitution advocacy group which operated routinely in Calgary. Persons with links to POWER in Vancouver infrequently appeared in the press as spokespersons for hookers, though not for hustlers. Elizabeth Fry in Calgary has developed position papers on prostitution, but they have had little contact with people working actively as hookers, their clientele consisting of more serious, female offenders contacted through the courts. There was one organization which has been created specifically to address the predicament of female hookers--Exodus, which has been operating a shelter near the city core since January 1984. This has been a ten bed facility for women who express an interest in moving off the street and into a more normal lifestyle. It is modelled on the twelve-step program in Alcoholics Anonymous, and provides counselling and support from ex-hookers who have graduated from the program themselves. There

are no professional social workers or child care workers on staff. The entire operation is run through volunteer workers. They also rely on the Food Bank.

Exodus is not an approved agency, and financial support has been meagre and discontinuous. The women in the program are encouraged to apply for social assistance to cover basic room and board costs. Individuals under eighteen years of age who do not qualify for assistance do qualify for small amounts of support from the JIMY program to cover costs of things like a clothing allowance. In April 1988, there were six persons living in the facility who stayed an average of six months, and the director of the shelter claimed a success rate of about 75% in keeping the program participants off the streets. A second project, Exodus II, has provided a collective living situation for individuals who have progressed through the program, but who were unprepared for living completely on their own. The majority of persons involved in Exodus were reported to have come from abusive backgrounds, and faced problems of emotional maturity and self confidence. As for the impact of Bill C-49, there is no evidence from changes in the caseloads at Exodus that the new law has increased demands for service.

Because of the unorthodox nature of the treatment regime, United Way and municipal funding have contributed little to the overall operating costs of the program, and Exodus has not been incorporated by the Youth Courts into alternative measures programs for convicted prostitutes. However, the credibility of the organization has continued to grow, as have its links with other agencies and care-givers. As public awareness increases that street prostitution has a social welfare dimension over and above any consideration of nuisance, and if specific facilities are to be developed, the role of Exodus and programs like it will become central. Surprisingly, this is the only open, private and long term therapeutic facility working exclusively with prostitutes in western Canada.

Notes on Adolescents Working as Prostitutes

Clearly, the provincial and municipal social services personnel have experienced no change in demands for welfare or treatment services by persons working as prostitutes, either as a result of the law, or for any other reason. In addition, there is little evidence from these departments and the agencies funded by them that there is a significant problem with juvenile prostitution in the city. Anxieties promoted by Canadian newspapers which paint pictures of an epidemic of juvenile prostitution appear to be unfounded, at least in Calgary.[1] Generally, we have found little consistent information which would indicate that juveniles constitute a major part of the street business in Calgary. However, the diagnoses of adolescent involvement may be better founded in Regina, and to a lesser extent in

[1] Including the sensationalized stories reported in the press which have been discussed in our overview of the media.

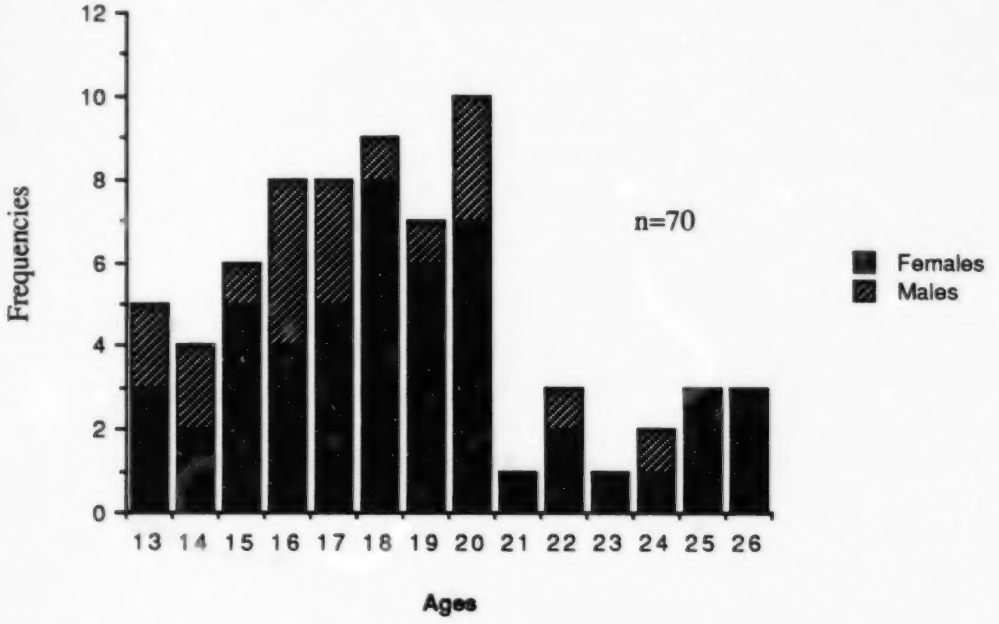
Winnipeg, than in Calgary. Also, as we shall see, there is some evidence that prostitutes, as a group, may becoming younger as a consequence of increases in the number of adolescents. In this discussion, we depart from the social service issues, and attempt to isolate information which sheds light on the prevalence of adolescent prostitution in the materials we have collected.

1. Interviews. We interviewed seventy persons during the summer of 1987--fifty-one females and nineteen males. Of these seventy persons, eight were under eighteen years of age (12%)--five out of fifty-one females and six out of nineteen males--and none was under sixteen.

2. Age of Entry. In our interviews, in addition to asking persons their age, we asked about the number of months or years of prostitution which they had experienced. This allowed us to infer the percentage of persons who had entered the prostitution when juveniles. The average age (mean) of entry was 18.7 for females, and 17.2 for males (the respective mode and medians were sixteen and seventeen for males, and eighteen for females). Fifteen out of the seventy were under age sixteen (just over 20%) and thirty-one were under eighteen (about 44%). These ages, however, would have occurred largely in the years 1983-87.

Chart 9.1

Age of Entry to Prostitution



3. Calgary Arrests. In the sting arrests conducted by Calgary police over the past decade, it is possible to determine the number of persons arrested for soliciting who were under age eighteen. The following table suggests that there is a trend towards a younger average age of all prostitutes charged with soliciting--from 22 in 1977 to 20.9 in 1987. Also, in the late '70s there were very few adolescents arrested. In August 1987, of the thirty females arrested on the main stroll, six were under eighteen, one was under sixteen. This represented twenty percent of all females charged. Over the entire year, three more adolescents were arrested (in 1987 all prostitutes arrested were female). In 1986 seven persons under age eighteen were arrested for soliciting, four male, three females. Eleven percent of all prostitutes were under eighteen (29% of hustlers and 6% of hookers). If we attend to the figures for 1987, it is evident that the percentage under 18 has increased even more dramatically; the 18% under eighteen years are all females. However, as noted in chapter two, concern for younger persons in 1986 and 1987 *may* have led to greater police focus on this group.

Table 9.1

Trends in the Frequency of Adolescents Charged from 1977 to 1987

	1977	**1978**	**1979**	**1986**	**1987**
Charges Against Prostitutes	67	22	68	70	53
Number of Prostitutes Charged	--	--	--	66	49
Average Age of Females	22	21.7	20.8	21.5	20.9
Average Age of Males	--	--	--	20.9	--
Number Under 18	1	1	5	7	9
Percent Under 18	1.3	4.5	7.3	10.6	18.3

1986 is the only year in which there were sizeable arrests of male hustlers, making shifts in age impossible to compute for males. Nonetheless, with an average age of 20.9 in 1987 (an a median age of 19), there would appear to be a problem with male adolescent prostitution, and in 1986 it is more pronounced among males than females (with an average age of 21.5 and a median age of 20), a finding which contradicts the public perception that the problem is primarily with young females. A second point. The data for females do suggest enough evidence of a shift to younger average ages to warrant a continuing examination of the trends in future years (18% for 1987 versus 6% for 1986). On June 11 1988, in the first sting of the year, twenty-four female hookers were arrested under s. 195.1; three (12.5%) were under the age of 18, and several had just past their eighteenth birthdays. At the time of writing it is impossible to determine whether the 18% recorded in police arrests in 1987 was an aberration. However, whether the figure is 12% or 18%, this does represent a marked departure from the patterns a decade ago.

4. Winnipeg Arrests. Although we do not have a complete record over the past few years of the characteristics of those charged with soliciting, the January-July period in 1987 does provide a sample of persons arrested in the business. Of all those arrested on prostitution-related charges, ten out of seventy-seven were under the age of eighteen (about 13 %), and five were under the age of sixteen (about 6.5%). All were females.

Conclusions

What these observations suggest is that a substantial number of prostitutes began their working lives as adolescents--forty-four percent of those we interviewed started before their eighteenth birthday. As a general rule in recent years, twelve to twenty percent of those arrested in Calgary have been under age eighteen. And what evidence we have of a longitudinal nature suggests a minor trend towards younger persons, and a higher proportion of adolescents in the population of prostitutes. Even so, our interviews suggest that the trends have not reached a threshold of sufficient gravity to impact on the social service sector, at least in Calgary, perhaps because, in terms of absolute numbers, the problem involves relatively few individuals, and because these represent a population of persons who, due to their transitional age (sixteen and seventeen years old), are least likely to be successfully controlled under the terms of the provincial child welfare legislation.

X. THE IMPLEMENTATION OF BILL C-49 IN WINNIPEG

Introduction

In April of 1984, submissions made to the public hearings of the Fraser Committee indicated that there was a substantial problem with street soliciting in the city. During the summer of 1987, we visited Winnipeg to assess the impact of Bill C-49 and to compare the impact in Winnipeg and Calgary. We conducted approximately thirty interviews with police, prosecutors, social welfare workers and community and business leaders. We also examined some of the official evidence of changes in police records of prostitution-related arrests, reviewed the popular press back to 1984, the regulation of off-street prostitution by the city licensing department, toured the strolls and investigated related matters. Almost immediately, we recognized some of the obvious differences between Calgary and Winnipeg. It is hardly surprising that such differences exist--despite both cities being "in the west." Perhaps what we overlook is that Calgary is as close to Winnipeg geographically as is Halifax to Toronto, or Cornerbrook to Montreal. Regional contiguity is no guarantee of common social characteristics.

Socially, the two cities are in dramatically different circumstances. Winnipeg's historical function as the railroad gateway to western Canada has been eclipsed both by the settlement of the plains on the one hand--the movement of the frontier farther west and intensive farming in the U.S.--and the building of the Panama Canal on the other--circumventing the monopoly of transcontinental transport. One of the major strolls is sited in the former commercial center of the city which went into decline with the fall in financial benefits from the railroad. Calgary is a more financially vibrant city, at least today, though the booms and busts associated with the petroleum industry have made growth in the city erratic--like Winnipeg's frontier days. Although they are cities of equal size--circa 600,000 population--the role of prostitution in the life of the two communities is quite different. Calgary retains a frontier town tolerance. Winnipeg generally does not. But one gets the sense in Winnipeg of a greater humanitarian concern for the plight of prostitutes, and greater social service involvement with them. Whether this results in a superior situation for prostitutes in comparison with the "hands off" approach found in Calgary is another matter.

Another important factor, perhaps related to the social welfare questions, is that Winnipeg acts as the urban hub for the entire province of Manitoba, drawing runaways from small towns, Natives from reserves, and people leaving the farms from the entire province. In contrast, those who run away from rural Alberta feed

into several different centers--both Calgary and Edmonton, each the size of Winnipeg, and to a lesser extent Red Deer and Lethbridge. As a result, the social welfare impact would naturally be spread more thinly in urban Alberta than in Manitoba. This explains in part why the social welfare sector is more mobilized on the issue of prostitution compared to Calgary--though also relevant is the fact of the earlier francophone settlement in Winnipeg with its legacy of Catholic institutions, including adolescent treatment facilities which continue to be operated by the religious orders.

Finally, Winnipeg's population has a much larger Native component, and the adjustment of the Natives to the demands of urban life has been slow and, in many cases, unsuccessful. As a result, this has put even heavier demands on municipal and provincial social welfare programs. Naturally, many of the young Natives have turned to prostitution both out of necessity, and as a result of weak family structures and lack of parental control. Whatever the reason, native hookers were highly visible in the Higgins-Martha-Henry Street stroll. Social service personnel estimated that they constituted forty percent or more of the female hookers in this area, although this was not evident to us on our tours. This factor represents another important difference in the two cities, since there are very few Native hookers in Calgary.

The Strolls

Prostitution operates in the city through street soliciting, through the bars and beverage rooms, and in off-street escort agencies and massage parlours. This report is devoted primarily to the street scene. There are three discrete strolls in Winnipeg which we viewed in 1987. (See Map.) The first is located in an area undergoing re-vitalization through a municipal program known as the Core Area Initiative. In the past decade, this area developed into the city's main tenderloin area. Formerly known as Old Market Square, it was recently renamed "The Exchange" and is being promoted as an urban tourist attraction. It is located largely south of the Civic Centre. The buildings are old, two and three story warehouses and business offices, many of which have been renovated as trendy restaurants and boutiques. The Exchange was the old commercial heart of Winnipeg. Due to prostitution, the area has gained a somewhat mixed reputation. As the Winnipeg Free Press reported, "at the mere mention of Main, Albert, King and Rorie Streets, most street-wise Winnipeggers from eight to eighty think of red lights and ladies of the night.".[1] Hookers also work McDermot, Ballantyne, Arthur, and King Streets. Even though the vice unit is located on Princess Street in the heart of the Exchange, women have been arrested for soliciting there as well. The area involved comprises six or eight city blocks.

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[1] April 3, 1985.

MAP 9.1

WINNIPEG - ALL STROLLS

Because of the core renewal program, city merchants and civic leaders have pressured the police to eradicate solicitation from this area. After the crack-down in the winter of 1986, the Exchange was virtually shut down--at least for a short period of time. Ironically, some merchants began to complain that their businesses were beginning to suffer since the "hussle-bussle" on the streets had declined. The Winnipeg Free Press reported the results of a survey which suggested that most merchants in the Exchange did not believe hookers were actually an adverse affect on the area.[1] In April the Free Press carried a report under the headline, "Merchants bemoan loss of street hookers," that presented the views of the President of the Exchange Association; he suggested that merchants were becoming worried over a drop in retail business.[2] And in July, the Winnipeg Sun was reporting that the women were back in the Exchange and that most merchants were glad of it: "Merchants Welcome Ladies of the Night".[3] The conflicting responses from members of the business community appear to derive from the kinds of businesses they represented. Retailers wanted the street traffic and the increased exposure brought about by the trade; by contrast, restauranteurs did not want their customers confronting hookers en route to and from the restaurant. It is worth mentioning that only the latter were open at night when the sex traffic was heaviest. Whether the effect on business was real or imaginary, the hookers have returned, although the numbers of persons working in the Exchange may not have recovered to former levels. In our observations in the last week of July '87, the second stroll was clearly the busiest, and the Exchange had relatively few street walkers on view. Our counts, though unsystematic, registered between five and eight in the Exchange. In the second stroll we counted from twelve to eighteen, and in the third from two to five. These were counts taken around 11:00 PM on three evenings mid-week in late July. The weather was not the best--there was light rain and some inclement weather, and thus there may have been more business in the bars.

The second stroll is located about a kilometer north of the first, and lies east of Main street and south of Higgins Avenue. Most of Winnipeg's hookers work either on Main Street or on the sidestreets crossing Higgins--Martha, Maple, Argyle, May, and Austin. This comprises an area of about eight small blocks. The vice office tally sheet for 1987 showed seventy-seven arrests in Winnipeg for street soliciting activities as of the end of July--fifty-seven of these arrests were made in this area, fifteen in the Exchange, and five in the third stroll. In our view, this was a representative indicator of the situation for the whole year, even though it reflected the picture only to the end of July since only six further 195.1 charges were laid in the subsequent five months. Our own casual counts converged with the records of arrest to identify this as the busiest area for soliciting in the city. The area is a

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[1] Feb. 16, 1986.

[2] April 4, 1986.

[3] July 30, 1986.

transitional zone between the commercial activities on Main Street in the city core and the working class residential area in Point Douglas. North of Higgins, the railway divides Point Douglas almost in half; the properties along the railway are virtually all commercial, warehousing, manufacturing, or storage. South of Higgins and west of Main, the properties are largely commercial, but there were residential pockets adversely affected by the street traffic associated with the stroll. During the summer of '87 the Mayor, Bill Norrie, received a petition with over 100 signatures from a resident on McDonald Avenue. Most of the signatories were parishioners of a Yugoslav Catholic Church who objected to the hookers in the neighbourhood of the church during evening services.

In addition, people in the areas northwest of the stroll have complained of the women using the residential side streets and small parks to turn their tricks. One resident nailed up signs reading "No Hookers Anytime," and city work crews have experienced repeated problems with street lights and their electrical junction boxes broken or damaged by hookers frequenting a small park in Point Douglas near Angus Street.[1] There have also been complaints in the Disraeli Street area, and in the area of the Louise Bridge where the women take their customers for car dates and park beside the river. Unlike the Exchange, there is no retail or restaurant trade in the Higgins Street area, and the major community impact from soliciting appears to be with the small pockets of residential housing within the stroll. In addition, the actual act of prostitution has become a major concern to the Point Douglas neighbourhood on streets several blocks northeast of the stroll. Winnipeg police have laid charges of gross indecency in such cases in the past, though this has not played a central role in curbing the business in general, or in deterring hookers and dates from frequenting specific neighbourhoods in particular. This practice fell into disuse after 1985, when undercover police found they could charge prostitutes for *counselling* to commit an act of gross indecency to replace the defunct anti-soliciting law. With the passage of Bill C-15, gross indecency was removed from the Criminal Code, leaving this type of charge only viable with real customers soliciting adolescent prostitutes.

The third stroll is in the area surrounding the Provincial Legislature, and specifically the riverside park near the Louis Riel Memorial which is located south of the Legislative Buildings between Assiniboine Avenue and the Assiniboine River. This area is frequented almost exclusively by male hustlers (one arrest in this area nabbed a male and female who offered to do a "three-some" with an undercover policeman). The park itself extends along the river and is not abutted by either residential housing or commercial properties. At night Assiniboine Avenue is fairly well lit, though the park is not. The major community impact of the stroll occurred just east of the legislature in the large city block formed by

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[1] Winnipeg Free Press, Sept. 26, 1986; Winnipeg Sun, Sept. 25, 1986

Kennedy and Edmonton Streets, and Broadway and Assiniboine Avenues. Hustlers have been using the laneway which divides this long block to turn tricks. In 1987, the lane was changed to a one-way zone in an attempt to curb the late night disturbances.[1] As noted earlier, there were five arrests for soliciting in this area in the first seven months of 1987. Police felt that the solution was inadequate--similar levels of traffic continued to frequent the area.

As in Calgary, the police concern was greatest on the female strolls. The Winnipeg police also confirmed one of the things we had learned from Calgary police: undercover operations against hustlers were precarious because the hustlers frequently spent twenty minutes just talking, and when the subject of sex came around, they were frequently willing to engage in sex without any charge. From a police perspective, deployment of undercover personnel to arrest hustlers was relatively unproductive.

We did not conduct systematic interviews with prostitutes in Winnipeg. However, we did learn something of their age distribution which confirmed, in general, the age range we observed in Calgary, and the number of juveniles involved. The vice office tally sheet showed seventy-seven arrests as of the end of July 1987. The age distribution of those arrested to that date is shown below. Ten out of the seventy-seven (13%) were under the age of eighteen, and the median age was twenty-two. The ages combine males (n=5) and females (n=72). In Calgary, the median age of all prostitutes arrested in 1986 and 1987 was twenty (for 93 females and 15 males), and the percentage under eighteen was 14%.[2]

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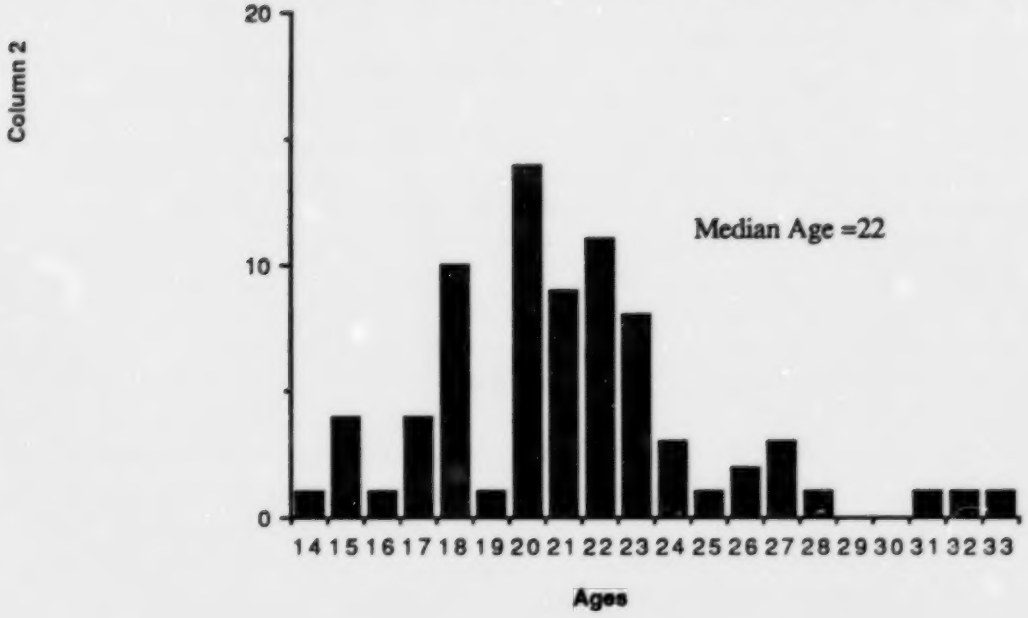
[1] Winnipeg Free Press, May 13, 1987.

[2] See pp. 29-30 of this report.

Chart 10.1

Age Distribution for Sample of 77 Winnipeg Hookers



Police, the Courts and the Moral Dimension in Winnipeg Law Enforcement

The immorality of prostitution and the concern to control it through arrests became very evident from interviews conducted with Winnipeg police. This was revealed by the express attitudes of senior detectives and other senior policemen, as well as by their record of enforcement in this area. We found it noteworthy that the Winnipeg police did not allow the Hutt decision to curtail the successful prosecution of prostitutes. Although Hutt undermined the soliciting section, Winnipeg police continued to arrest them in 1984 (as far back as we could get data) with charges of committing acts of gross indecency (fellatio in a car open to public view), and in 1985 with counselling to commit the same--charges which are prosecutable independent of evidence of the financial transaction since the offences were drafted to apply to the public at large. While these charges were aimed at curbing soliciting, gross indecency is an indictable offense, not a summary conviction charge, and can provide in law far graver penalties.[1] After the changes to 195.1 were introduced to

[1]In practice provincial court judges have given fines in the $250-500 range. See note 2, p. 48, and text at page 65 of this report for further details.

restore the leverage neutralized by Hutt, the police continued to rely on gross indecency charges to target the prostitutes, as well as other prostitution-related charges arising from bawdy-house operations. But in 1986, s. 195.1 became the central tool in the control arsenal. The gross indecency charges were employed mid-day since the act must be exposed to public view; the soliciting charges were employed at any time of day. Even so, the pattern of enforcement of s. 195.1 was unlike the use of occasional sting operations which we found in Calgary. Specifically, Winnipeg police laid far more charges under the new section, and, secondly, appeared to have employed the law in a chronic as opposed to an occasional or episodic fashion.

Furthermore, the uncertainty about the constitutionality of s. 195.1 did not result in a no-arrest policy as was the case in Alberta from September '86 to August '87. In Winnipeg, the constitutionality of the federal law was challenged in Judge Kopstein's Provincial Court during the prosecution of twelve persons arrested for soliciting in 1986. On November 3, 1986, Judge Kopstein found in favour of the accused and declared the law unconstitutional by trying to limit freedom of speech. A referral of the question of the constitutionality of s. 195.1 to the court of appeal was heard on April 29 and 30, 1987, although no judgment was handed down until September 23, 1987. Police in the intervening dates did not desist from arresting prostitutes as in Alberta (though in Alberta this was as a result of a decision by the provincial Attorney General). By and large in Winnipeg, police continued to charge though they switched from the use of 195.1 to the counselling gross indecency charge. However, by July 18th, the police had switched back to s. 195.1 even before the decision from the Court of Appeal was handed down. This was as a result of complaints in the second stroll, and following a consultation with the Crown office over what could be done to control the traffic in the Maple and McDonald Street area. The police expressed every confidence in July that the reference of the constitutionality question to the appeal court would uphold the anti-soliciting law. They were correct.

Police also took great comfort in the position expressed by the reaction of the appeal court judges during the hearing of the matter. The reactions from the bench suggested to the Crown that the issue of prostitution was not one of nuisance as the Crown was alleging, but of vice. Counsel for the Attorney General advised researchers that Charles Huband, Judge of the Court of Appeal of Manitoba, reminded the Crown that the conduct under discussion was "vicious," in the literal sense. This attitude was reiterated by vice squad officers--prostitution was not an issue because it disrupted the flow of traffic, and caused inconveniences. The position of the leadership in the vice unit in 1987 was that the behaviour in question was unacceptable because it was basically evil. As one of the young detectives advised the researcher--the hookers may well be victims of prior abuse themselves, but what they subsequently choose to do on the street was nonetheless a sin. There is

a similarlity between the views of the police and those expressed by the Manitoba Court of Appeal Court. In his written judgment, Huband J.A. dismissed the Fraser Committee arguments regarding nuisance that had been introduced in parliament by John Crosbie, then Minister of Justice, and sponsor of the changes to the soliciting law:

> We were referred, in argument, to comments made by the Minister of Justice in his speech to the House of Commons when s. 195.1 (1) (c) was debated before coming law. The Minister indicated that the provision was made to control the public nuisance caused by prostitutes plying their trade in certain areas. I am doubtful whether this kind of material should be considered at all in determining the purpose or object of a statutory provision. Whatever Mr. Crosbie's reasons, the parliamentarians who voted for the enactment of 195.1 (1) (c) many have been motivated by many divergent reasons. No doubt the public nuisance aspect of prostitution is significant to some. Others might be motivated by the desire to control the spread of sexually transmitted diseases, including AIDS. It would be reasonable to suppose that others would consider the close association between the nether world of drugs and violence. At best, the ministerial statement is of little weight.[1]

The construction taken by the Court of Appeal was that the anti-soliciting law and the other criminal code provisions regarding living off the avails and the bawdy house laws were directed towards the eradication of prostitution per se, and that s. 195.1 was the least obtrusive approach compared to policing the actual sexual act. Huband J.A. was specific on this point. "Reluctant to have police authorities invade the bedrooms of the nation for enforcement purposes, Parliament found...a more palatable way of dealing with the matter" (p. 12). This was Bill C-49.

The convergence of perspectives between the leadership in the vice squad and those of the Appeal Court, i.e. that the issue presented by Bill C-49 was primarily a moral issue, as opposed to an issue of nuisance, persuaded us that the police were not putting their own moral interests before the requirements of professional police work. It was the view of the police that prostitution was an issue for them because it was an issue for the Winnipeg public--and that the Appeal Court would vindicate such views. In this view Winnipeg, despite its socialist traditions, appears to have a more conservative culture than Calgary in the area of public morals. This point was made to us by a member of the Winnipeg Chamber of Commerce who has lived in both Calgary and Winnipeg. Certainly, there is far greater population stability in

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[1] Reference on the Charter and the Criminal Code, Manitoba Court of Appeal , September 23, 1987, unpublished, p.11.

Winnipeg than in Calgary. The dramatic economic growth in Calgary has brought tremendous in-migration to the city from other parts of the country. By contrast, Winnipeggers tend far more to be people who were born and raised in Winnipeg. The public concern for the vice trade may reflect this difference. Also, the tolerance of prostitution we found in Calgary may be reinforced by the pattern of residential growth which has resulted in limited land-use struggles between respectable society and hookers. In Calgary, with its historic low density planning, the city has mushroomed in the suburbs--not in the core. And the types of land-use conflict experienced in and around the Winnipeg strolls is the exception rather than the rule in Calgary.

The only problem with the Winnipeg-conservatism thesis is that it was not always shared by other the key actors we spoke to. The chief prosecutor in the Youth Court identified nuisance and child welfare considerations as the key issues. The lawyer representing the Attorney-General's Department had stressed the nuisance problem in arguments during the referral to the Court of Appeal. However, the senior Crown prosecutor we spoke to did share views which approached those of the police and the Court of Appeal, though these were not expressed with the same intensity. The morality issue was conspicuously irrelevant, however, in our interviews with social welfare workers.

Arrest Records in Winnipeg 1984-1987

What were the patterns of arrest before and after changes to the anti-soliciting law? The following frequencies of arrest by charge from 1984 to 1987 record: (a) the wide mix of charges from different jurisdictional levels employed against prostitutes, and (b) the impact of s. 195.1 in 1986, and the change in its use in 1987.

As of 1987, the Winnipeg Police had not yet computerized the record-keeping system, although this process was under way. The arrest frequencies reported here were drawn from the Annual Reports of the Vice Unit from the period 1984 to 1987. The figures show first, that prostitution-related charges rose significantly from 1984 to 1986, and second, that the anti-soliciting law (and specifically the section on communication) was employed aggressively by the city police. In 1986, arrests increased by two-thirds over 1985, and two-thirds of the 1986 arrests were for soliciting. The following year this fell to under half of the arrests and counselling gross indecency rebounded proportionally. As outlined earlier, from November 1986 to September 1987, the constitutional status of the law was uncertain.

Three other things are suggested by these figures. First, Winnipeg police have been active in attempts to stop prostitution through a relatively vigorous implementation of the other Criminal Code provisions associated with the business-

-controlling or directing the movements of prostitutes, procuring someone for the purposes of engaging in prostitution, and committing or counselling to commit acts of indecency. Prior to 1985, police charged for acts of gross indecency. In 1985 they first began to lay charges of counselling to commit such acts. Even though a soliciting charge was never laid between 1979 and 1986, Winnipeg police were active nonetheless. Secondly, there appears to have been a fairly vigorous crack-down on off-street prostitution associated both with the charges under the municipal by-law and with the sections of the Criminal Code dealing with the

Table 10.1

Number of Charges by Offence Categories 1984-1987 (Frequencies)

	1984	1985	1986	1987
Procuring	3	0	0	0
Attempt Procuring	7	2	1	0
Control Prostitute[1]	7	3	7	0
Gross Indecency	10	0	2	5
Indecent Act	6	0	0	0
Counsel Gross Indecency	0	21	16	87
Counsel Indecent Act	0	33	0	0
Keep Bawdy House	3	20	4	0
Found-in Bawdy House	3	0	4	0
Inmate in Bawdy House	0	0	13	0
Permit Premises[2]	6	0	0	0
Material Witness	2	1	0	0
Live on the Avails	9	7	8	4
Public Mischief	0	1	1	0
By-Law, Handbills[3]	32	5	30	0
By-Law Escorts[4]	0	66	9	1
BCWA[5]	26	25	6	2
s. 195.1	0	0	205[6]	85[7]
Other Charges	unknown	unknown	unknown	23[8]
Totals	81	184	306	207

1. Exercise control over the movements of a prostitute.
2. Permit premises to be used for the purposes of prostitution.
3. City By-Laws forbid employing sexually suggestive imagery in the advertising of escort and massage services.
4. City By-Law 260/72 licenses proprietors of Escort and Dating Services, and of Massage Parlours, as well as individual escorts and massagists. The By-Law was re-numbered CBL 4007/85 as part of an overhaul of the licensing of all businesses from abattoirs to wineries.
5. The Baby and Child Welfare Act allows social welfare authorities to seize a child needing care and protection, and to hold them in protective custody. Police use the Act to remove juvenile hookers from the street.
6. Of the 205 arrested 138 were females hookers, 3 were male hustlers, 5 were trannies, and 59 were male customers.
7. Of the 85 arrested 40 were adult females, 9 were juvenile females, 2 trannies, 4 adult hustlers and 1 juvenile hustler--all prostitutes; the balance were 29 male customers.

8. In the 1987 year-end report the Vice Unit recorded charges laid for non-prostitution types of charges. In 1987 these involved prostitutes in secondary offences, specifically 8 counts of drug possession , 7 outstanding warrants and one count each of prohibited weapon, offensive weapon, impersonation, traffic offense, assault police, possess stolen property, public mischief, and uttering a forged document. These sorts of charges may have been laid in the past, but they were not included in the annual reports.
Based on the Annual Reports, Vice Squad, Winnipeg Police Department 1984-1987.

operation of bawdy houses. And finally, the provincial social services legislation has been employed with some success to control juvenile prostitutes. According to a previous Winnipeg inspector in charge of the vice unit, the change from the Juvenile Delinquency Act to the Young Offenders Act made it more difficult to get juvenile hookers off the street.[1] Under the YOA children can only be detained for actually breaking the law; previously under the JDA, promiscuity would have allowed police to act against juvenile hookers. Consequently, given the change in the federal law, the provincial Baby and Child Welfare Act has been employed to arrange secure custody for juvenile hookers who may be in moral, medical and physical danger working as prostitutes.

The record of arrests corroborated our impression that Winnipeg had a much more active control orientation compared to Calgary. A concomitant of this practice is our observation that, compared to Calgary with its more tolerant attitude, the Winnipeg Department did not have very positive relationships with the street culture. We were advised by senior officers that the police would not condone soliciting in any area of the city. They did not keep an up to date photographic intelligence on the street hookers aside from identification undertaken during the arrest process. They did not keep systematic counts of hookers on the strolls, and consequently they were very reluctant to estimate the number of young men and women involved in street prostitution. The figure given to us by an officer put the number on the strolls between 90 and 130, though there was not a lot of confidence attached to this estimate by the police staff. This was probably as reasonable an estimate as any, although in 1984 an officer put the number at 200 and the Elizabeth Fry Society put the 1984 number at 400.[2] Lautt obtained estimates from the police in Winnipeg in 1984 which put the total of in the range of from 120 to 450 male and female prostitutes[3]. Clearly, such variation suggests little consensus.

One of the points of contention between the police and the street people in 1987 revolved around the police practice of seizing condoms from hookers as evidence of their intention to engage in prostitution.[4] Condoms were provided in a store front drop-in center for hookers run by ex-hookers and street workers, and

[1] Winnipeg Free Press, April 6 1984.
[2] Elizabeth Fry Society of Manitoba, Making Street Connections, Winnipeg, 1984.
[3] Project T.A.P. Towards an Awareness of Prostitution, Ottawa: Department of Justice 1984, p.20.
[4] Winnipeg Free Press, June 3, 1987.

were supplied by the Women's Health Clinic out of the contributions from community groups to aid in the control of disease.[1] According to the POWER[2] representatives, the police were guilty of hypocrisy by warning the public that the prostitutes were spreading AIDS--something of which they advised us--while making the spread of such problems all the likelier by seizing condoms. A city councillor joined prostitution spokespersons in condemning such confiscations as "unconscionable".[3] This episode epitomized the antagonism between the police and the street people.

There was another area in which the moralistic differences between the Calgary and Winnipeg police were reflected in the arrest records--regulation of off-street prostitution by city by-laws. We outlined in an earlier chapter the management of the Calgary escort business under the municipal by-law. Resort to criminal prostitution for living off the avails, and control and direction of prostitutes by pimps in Calgary was extremely rare. It is not that Calgary police were unaware of what went on. The by-law was used to regulate the business. By contrast, the city of Winnipeg licensed massage parlours and escort services. Yet the police actively investigated those premises as bawdy houses with information from the licence inspectors, and there have been consistent charges in these Criminal Code areas before and after C-49 as the arrest record demonstrates. The City of Winnipeg appeared to want to licence the businesses and bring them under some municipal scrutiny. They adopted a Calgary-style licencing regime, and set fees of $3000 for agencies and $30 for escorts and massagists.[4] Yet the creation of this municipal regime has not prevented the Winnipeg police from enforcing the federal laws regarding bawdy houses, and they have continued to crack-down on massage parlours in particular. According to the police, the by-law control route was proving unsuccessful. Offenders were facing mere $50 fines--unlike the larger minimum fines found under the Calgary regime. In 1987, the police did not use the by-law, since many of the previous charges were still being contested in the courts. The $50 fines were viewed as inconsequential.

On the question of displacement, the off-street trade did not appear to have experienced any boom in profitability with the advent of C-49. The patterns of advertising agency ads in the Yellow Pages reflected the same trends observed earlier in Calgary. There was no evidence inferred from advertising expenditures that the profitability of the agencies have increased as a result of C-49, at least as

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[1] Winnipeg Sun, March 27 1987.

[2] Prostitutes and Other Women for Equal Rights.

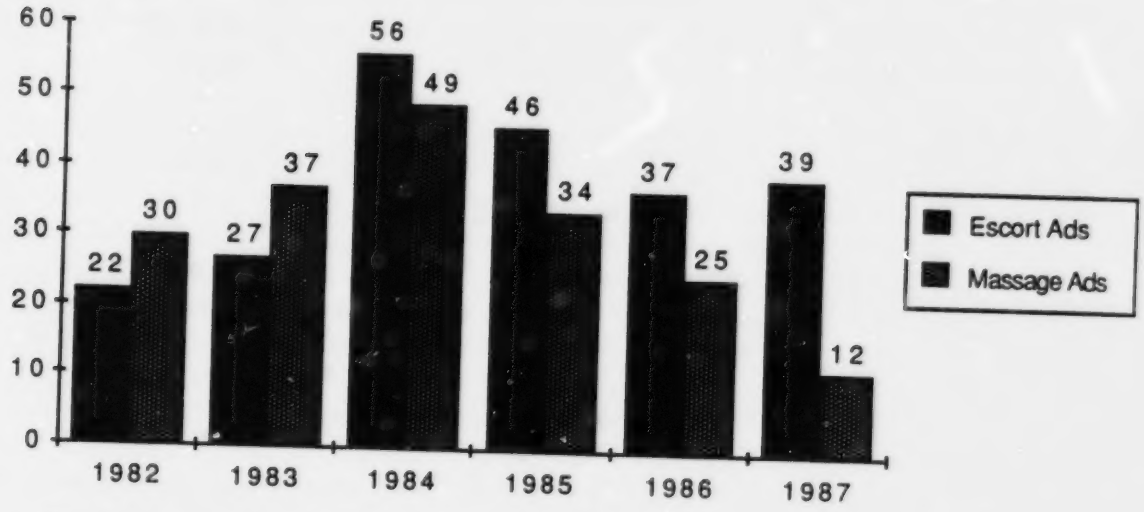
[3] Winnipeg Free Press, June 23, 1987.

[4] City of Winnipeg By-Law Handbook, 1987.

judged by this external sort of evidence. If anything, the business was declining after 1984.

Chart 10.2

Escort and Massage Service Ads in the Winnipeg Yellow Pages, 1982-1987



One of the implications of the Winnipeg approach is that despite the tensions which it created, the Winnipeg force has had a continuous supply of arrests without any of the Calgary style street control or management--even if this has entailed a certain amount of animosity from the street. This was true prior to C-49 and during the period in which s. 195.1 was under review by the Manitoba Court of Appeal. When we compare Calgary and Winnipeg, it is an open question what the Winnipeg police have to show for their work. Certainly, the hookers have records, have paid fines, and a few may even have been briefly incarcerated. If one takes a moralistic perspective, then their work is sound inasmuch as it reflects an appropriate attitude towards vice. However, the larger question is whether aggressive control of the young women represents a better policy than simply ignoring them, managing the streets, and allowing "career attrition" to occur for reasons other than legal deterrence. Winnipeg and Calgary were clearly on different sides of this question, and have played the different options. Neither city has eradicated prostitution, and both seem to have comparable numbers of hookers.

We approached the Crown office in Winnipeg to determine the record of prosecutions, outcomes and penalties. Since this material was not computerized, we were advised that it would be impossible to supply the figures we required. And while individual names could be searched, this information was removed from all materials given to us by the police, making individual cases impossible to trace. However, the Crown Attorney for Criminal Prosecutions advised that it was his

experience in the Winnipeg courts that (a) the penalties for soliciting and counselling, or committing, acts of gross indecency were largely the same; (b) as a rule, all first time offenders, customers and prostitutes alike were facing discharges; and (c) repeat offenders were facing fines--$100 in the case of young offenders, and $200-$500 in the case of adults. Incarceration was rarely employed as a penalty in the Winnipeg courts. This was corroborated by a newspaper report in 1986 which indicated that Winnipeg courts were unusually lenient in the first batches of cases heard betweeen January and September of 1986 in which the use of discharges and suspended sentences was prevalent.[1]

The police were able to advise us about the rates of conviction of persons accused under s. 195.1 in 1987, since such figures had been compiled following a request for such information from the Vancouver Police Department. The Winnipeg police estimated that 66% of customers had been convicted but only 12.5% of prostitutes had been convicted. Such figures must be treated with great caution since the 12.5% figure was based on only sixteen cases already dealt with by the court within the same calendar year as the arrest. Of the sixteen cases dealt with, there were six stays, eight failures to appear and two convictions; ergo, two out of sixteen, or 12.5% were convicted. However, there were still thirty-three charges which were pending before the courts. It was the experience of the Crown office in Winnipeg that the majority of hookers simply plead guilty, almost as a matter of convenience. On this basis, we should expect convictions in the majority of the thirty-three outstanding cases.

Social Services and Social Welfare Considerations

The patterns of social services in Winnipeg appeared to be much better developed, and the various private actors in the system better linked, than anything encountered in Calgary. In Winnipeg, there has been substantial contact between the Elizabeth Fry Society, the YWCA, POWER, the Children's Home of Winnipeg, Ma Ma Wi Chi Itata (or "Ma Ma Way"), Child and Family Services workers, and the various juvenile care facilities. There was a loosely associated network of workers known personally to one another and formally associated for a period of time through the Inter-Agency group, and mutually concerned about the general economic and social status of juvenile and adult prostitutes. Such links as appeared to exist between the social sector area and the police were with the Youth Unit (whose principal man was ill during our visit), and not with Vice. However, links between the Youth Court Crown office and the social services sector appeared rather happenstance, inasmuch as the prosecutors were unaware of any alternative care facilities which might be employed in diversion schemes permitted under the YOA. This has been changing due to personal contacts between the Chief Youth

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[1] "Hookers' Fines Called Poor Return," Winnipeg Free Press, November 18, 1986.

Court prosecutor and individuals in the Children's Home of Winnipeg. Even so, the CHOW has had a limited capacity to initiate and operate such schemes.

It was the consensus among those to whom we spoke in these agencies that street soliciting was a major problem in Winnipeg, although no one thought the crack-down following C-49 was of any benefit to the hookers. We were advised repeatedly that the major solution to the problem of prostitution was economic since that was the major reason for turning to it. The Children's Home of Winnipeg, for example, operates a training program to teach survival and job-finding skills--the Training and Employment Resources for Females or "TERF" program. However, the program is staff-intensive and can only handle about ten persons at one time; the attrition rate from the program was about fifty per cent. The program operated classes which counselled women from ages seventeen to twenty-four and worked closely with them--some of whom have been referred from the POWER drop-in center. It also helped to create work experience for those who wanted an alternative to the street, operating with support from the SEED program from Canada Employment. This was the only job-oriented, re-training facility which we came across in the Prairies.

Our interviews with social service workers suggested repeatedly that many of the hookers were recipients of social assistance, and that many were supporting one or more children. Consequently, we spoke to representatives of the City of Winnipeg Social Services Department. The municipal welfare program is for adult "unemployed employables" who require assistance; the provincial system is a "categorical" program for people in need who also fall into a special category (i.e. mother separated from husband for more than ninety days; medically unemployable for more than ninety days; widowed, etc.) A single person on municipal assistance in 1987 in Winnipeg received about $350 per month. The program manager for Social Services confirmed that his Department occasionally learned through the social workers that certain applicants were, or more usually, had been involved in soliciting. In other cases, they simply suspected that some recipients of assistance were street hookers. However, it was the view of Social Services that, first, these comprised very few cases and did not amount to much in terms of the overall caseload of some 7,500 on a monthly average in 1987. (A case represents either a family or an individual on assistance, so that the caseloads in the 7,500 range in 1987 involved about 15,000 people in all.) Second, Social Services did not see much merit in forcing these individuals off the public purse since welfare might play a part in helping them to square up--indeed many of the women explicitly reported this as their motive for seeking assistance--and removal of benefits would probably ensure their dependence on prostitution. Also, some of those on assistance were battered women who had been hookers and were trying to get out of the cycle of violence associated with their pimps. Third, it was the impression of the program manager that there had been no noticeable change in the

dependence of young employable women on welfare following the introduction of C-49 in the beginning of 1986, and hence no grounds for inferring that the Bill had enhanced social welfare costs by driving them off the streets and onto welfare, at least in 1986. In fact, the economy appeared to be picking up in 1986 and 1987, and there were fewer persons on assistance and receiving assistance for shorter periods of time compared to 1985. Thus, the overall trends are in the opposite direction to what the displacement thesis would suggest.

There have been dramatic changes in the caseload indicators and in the nature of the applicants from 1979 to 1987. From 1979 to 1981, the average monthly case load was 2,100 to 2,400 cases. In 1982 the caseloads jumped dramatically to some 6,000 in December of that year. And from 1982 to 1987 the caseloads have remained in the 6,000 to 8,000 range. The reason for this stepwise increase in the caseloads appears to be economic: the seasonally adjusted unemployment rate jumped from 5.9% in August of 1981 to 9.3% in August of 1982, and remained high in subsequent years until 1986.[1] Also, in 1985 approximately seventy per cent of the applicants were single and under age twenty-five; in March of 1982 this group constituted thirty per cent of applicants. Since residents had to be eighteen years old to qualify for social assistance in Manitoba, this group represented the eighteen to twenty-four age bracket. Consequently, the inference which Social Services made was that the economy may have been putting more pressure on young people to engage in prostitution, and to seek social assistance. But the C-49 displacement thesis was thought to be unfounded.

Treatment Services

There was another wrinkle in the Winnipeg prostitution scene which we learned about from the workers in the child and family services agencies and the Native social service agency, Ma Ma Way. This involved the problem of solvent sniffing chiefly, though not exclusively, among Natives. There have been several convictions in the city of older men who have supplied solvent (paint thinner, lacquers) to pre-teenage kids in exchange for sexual favours. A loosely associated "anti-sniff league" exchanged information to identify the offenders and make sure the victims were helped. In the view of one social worker, the sniffing children were "pre-prostitution", that is, were being socialized in a way that would make their shift to the street, to street drugs (toluene and retalin) and to prostitution highly probable. Obviously, sniffing alone is not decisive. Such children are exploitable, experts believe, because they have come from disturbed families and are without the ordinary family control structures which would check their exploitation.

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[1] 8.8 in 1983, 8.0 in 1984, 8.6 in 1985 and 7.3 in 1986.

Social Workers at Ma Ma Way reported tremendous problems in Native homes in addition to the use of solvents. Alcohol abuse, spouse and child abuse, educational failure, and runaways were a major issue for Natives living in Winnipeg. Compounding matters was the apparent reluctance of Native families to police or discipline one another aggressively. The economic marginalization of young female natives combined with low educational aspirations has resulted in many turning to prostitution. Bill C-49 has not accelerated this--nor has it much improved the quality of life of those already involved, at least directly.

Lastly, in the social service area, we learned of a unique program created for two young female hookers in their early teens. One of the girls had been an ideal student until the sixth and seventh grades. She then became extremely aggressive, and in fact was charged with assault, became defiant of her teachers, began to associate with female delinquent gangs, started to prostitute and sell drugs in her school, became remorseless and stole money from home, and began to socialize with members of a biker gang. She had been living with her grandmother, having been abandoned by her natural mother at age two. Her mother had problems with alcohol and drugs. She was sexually abused at age six by her grandfather. When this girl became unmanageable, her grandmother asked for assistance from the children's aid society--now the Child and Family Services Department. A special 'open' program was created to furnish a unique treatment regime to stabilize the two girls, establish strong bonds of trust between the girls and the workers, encourage them to become involved in normal recreational activities, and gave them a routine sleeping/eating/working pattern, and emotional and educational counselling. The program was designed to be open custody in order to help develop responsibility and to ensure that the home was not viewed as a prison. One of the girls had escaped both from a closed custody facility and from the police on several occasions, and in fact had access to drugs while in the locked facility. Child care workers saw little merit in detaining the girls in similar circumstances.

The special program entailed three daily shifts of child care workers operating seven days per week--twenty-one full shifts, a half-time outreach worker to help locate the girls when they decided to return to the streets (since the agency expected conversion to occur gradually and since it would take time to win the confidence of the girls and to change their habits), a quarter-time manager to coordinate and supervise the workers, a rent subsidy, independent living costs, etc. The program was designed to run for two years at the cost of $196,915 per year. Social workers were convinced that the two juveniles would "show up in body bags" as a result of street life without this special intervention. Four hundred thousand dollars for two lives--<u>if</u> the program succeeded. None of this was directly related to C-49. This program--and this is the only one of its kind we have learned about on the prairies--has not been created as a result of the new law. However, the

program raised questions about where public funds were best spent in controlling the course of offences such as prostitution.

Legal Aid

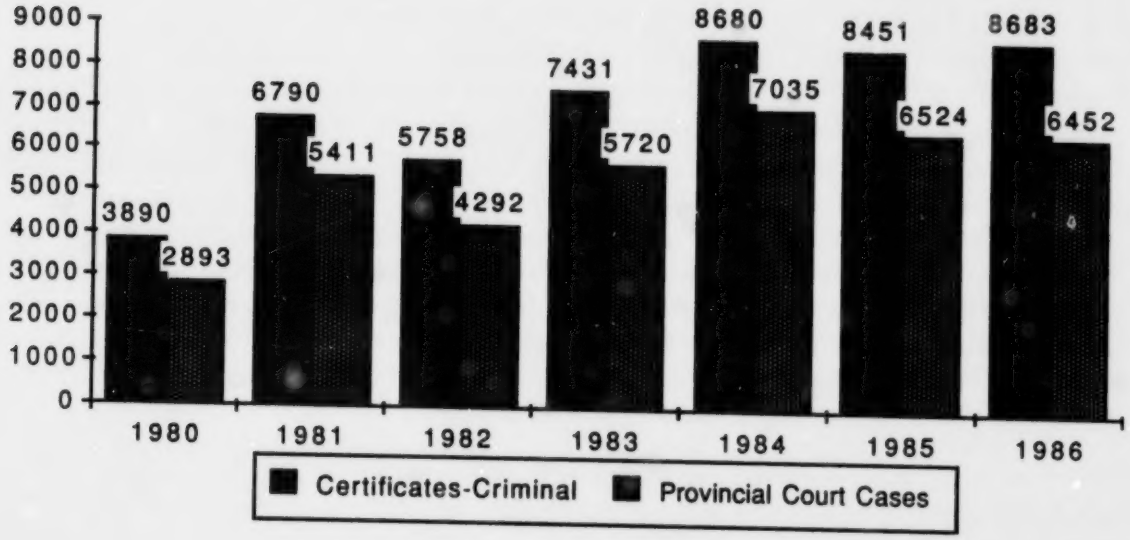
Has the crack-down associated with Bill C-49 generated higher costs to the legal aid plan in Manitoba? We interviewed the Assistant Area Director of Legal Aid for Southern Manitoba who approved all the applicants for Legal Aid which would arise in the Winnipeg courts. We tried to determine if the new bill had inadvertently created new legal aid expenses. He pointed out a number of things. Legal aid intake workers prescreen applicants and advise them of their eligibility for Manitoba Legal Aid. In 1987, assistance to retain a lawyer under a legal aid certificate was available to single individuals who earned less than $9,600 annually. Consequently, persons presenting with expensive jewelry or furs, with pricey addresses and/or who could afford $600 or $700 rent per month would be advised that they would not qualify for legal aid, thereby excluding successful hookers on the financial eligibility screening. A second consideration. Many women simply pleaded guilty, and employed the services of the duty counsel in the Winnipeg courts. This could be done without qualifying for a legal aid certificate, and would not constitute a grave burden on the legal aid plan, although it would affect the caseload of the individual duty counsellors. This appears to have been the route pursued by most hookers. A third point was that first offenders facing a charge under 195.1 did not qualify for legal aid even if their earnings were less than $9,600 since the offence is a summary charge, and the penalty on a first conviction would probably not entail risks of incarceration. However, counselling to commit a gross indecency and acts of gross indecency would qualify since these were indictable charges and provided stiff maximum penalties. Thus, it is quite likely that the policing of prostitution would and did burden the legal aid plan--but more obviously because of the gross indecency charges than any changes associated with C-49. Only repeat offenders under s. 195.1 charges would qualify for assistance.

About ninety per cent of the applications were approved for financial support, enabling the hookers to receive a legal aid certificate on subsequent arrests and prosecutions for soliciting. But how many repeat cases were there? According to police records, in 1987 there were only twenty-two repeat offenders (nineteen adult females, two juvenile females, two adult males) for soliciting and other prostitution offences. In 1986 there were 20,332 certificates issued for criminal and civil cases, and there may have been five or six per cent more in 1987. The repeat cases would constitute about one-tenth of one per cent of the legal aid caseloads. So even allowing for the prospect of successive convictions for soliciting, these numbers were currently so low as to be inconsequential in the overall picture in Manitoba Legal Aid. Such costs probably will continue to grow, but still do not seem to threaten to become a significant portion of the costs to the plan.

The following chart is based on the annual reports of Manitoba Legal Aid and shows trends in the caseloads. There has been a constantly escalating growth in the workloads under the plan over the 1980 to 1986 period for criminal matters. From 1985 to 1986 there was an increase of some 232 certificates involving criminal charges which were handled by the private bar. While it is tempting to infer that this increase may have involved soliciting cases, this was not confirmed by the other indicator--cases before the provincial courts (criminal division). There were actually seventy-two fewer cases heard before such courts in 1986 compared to 1985.[1] The increase in certificates would appear to have been heard in the higher courts. Since s. 195.1 charges were summary cases, only the Provincial Court has had jurisdiction to hear such cases. From these data

Chart 10.3

Manitoba Legal Aid Trends



it is impossible to detect any <u>increase</u> of costs to the plan in cases before the provincial courts in 1986, the first year of the new law. Of far greater concern to Manitoba Legal Aid was a change to the Criminal Code which allowed judges to appoint counsel for persons who appeared before them unrepresented. This has been a source of worry since defence counsel simply bill Manitoba Legal Aid, and the plan has no control over the eligibility of the accused for support. This was an important issue to the Manitoba Legal Aid directors; soliciting was not.

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[1] Manitoba Legal Aid, <u>Annual Reports</u>, Winnipeg, 1979-1986.

Summary

The anti-soliciting section of the Code was employed in Winnipeg in the winter of 1986 as soon as it became law, and dramatically lowered the number of prostitutes on view in public. However, the impact appears to have been temporary as the number soon rebounded to former levels. Probably for this reason we could find no evidence of an impact of the law on social or therapeutic services. The prostitutes have caused concern not only in areas where soliciting occurred, but in residential areas where they were doing business. As in Alberta, the constitutionality of the law was challenged and put in doubt for a period of ten months, and when enforced, the penalties assigned to the accused have been light. Although the law applied equally to prostitutes and customers, and to hookers and hustlers, the police devoted most of their attention to the female hookers. In 1986, of the 205 persons arrested for soliciting, 138 were hookers (67%), eight were hustlers (4%), and fifty-nine were male customers (29%). In 1987, of the 85 arrested, 49 were hookers (58%), 7 were hustlers (8%), and the balance were 29 male customers (34%). The pattern of enforcement is ironic since those who probably had the most to lose by arrest, the customers, were the least likely of all the players to be targeted. There were understandable organizational reasons for this. Unlike the old vagrancy law which could be enforced by the uniformed officers, the evidence required for the new communication law made undercover work essential, and required the specialization of vice detectives. And the police departments did not have the numbers of female policewomen required to entrap the male customers without their faces becoming well-known both to the customers, and to the real hookers, with all the consequences for safety and success which this entailed. This was true in all the prairie cities.

What is the future of prostitution in Winnipeg? We have no grounds for believing that current police and judicial behaviour will curb the street traffic. The area of today's busiest stroll at Martha and Higgins is only blocks from the Annabella Street brothels chronicled by James Gray, which thrived before the First World War.[1] The Winnipeg police expressed little confidence in being able to do more than "keep it under control". The possibility of stiffer penalties, and the clarification of the constitutionality of s. 195.1 making convictions more likely, might abate the magnitude of the business, and might deter those who are just at the point of entry. The more experienced hookers with a drug habit, or with children and on social assistance, are less likely to respond to legal sanctions, and the judiciary have traditionally been reluctant to penalize the ordinary working woman very severely. However, as a city councillor advised us, chances of regulating the

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[1] James Gray, Red Lights on the Prairies, Toronto, 1971.

business would improve substantially if society could legalize prostitution--although, as he added, there is not a politician seeking re-election in Canada who would propose this. Legalization would allow society to exclude juveniles, pimps, drugs, disease carriers and violent dates. However, Winnipeg's experience with by-law control of escort and massage businesses has been viewed by police and politicians as a complete failure. We have tried to report some of the moral sentiment shared by members of the control community--the police and the appeal courts--which has contributed to this outcome, and which would appear to make radical changes in terms of de-criminalization a political non-starter. It is not at all clear that the moralistic concern is shared widely among Winnipeggers, other than those, however, who are directly affected by prostitution. However, we have also learned enough about the social circumstances, especially of juvenile hookers, from Winnipeg social workers to know that simple de-criminalization is not necessarily in the prostitutes' own interests.

XI. THE IMPLEMENTATION OF BILL C-49 IN REGINA

Introduction

During the autumn of 1987 we visited the city of Regina to assess the impact of Bill C-49, and to compare its impact on Calgary, Winnipeg and Regina. The capital city of Saskatchewan was selected because in 1984 the Federal Department of Justice reported that the Fraser Commission found prostitution to be a real problem in the city.[1] Unfortunately, it appears to have been largely excluded from the Department's Working Papers on Pornography and Prostitution for the prairies, which was also reported in the same year.[2] Since then, the criminal statistics reveal that Regina has had the largest prostitution business in the province, and more than half of the province's total solicitation charges under Bill C-49. The city was visited in October, and we conducted interviews with members of the police force and Crown prosecutors, rode the night patrols with the vice squad, interviewed female hookers, and researched the police and court files. We also interviewed officers of related government and private social welfare and services organizations, and representatives of local community groups, and researched the history of media reporting on prostitution, moral and sexual offences in the city. In the end, Regina was as different as Winnipeg and Calgary in areas of policing, prosecution, criminal statistics, public opinion, and the larger socio-economic context.

Socially, the city is similar and dissimilar in respect to both Calgary and Winnipeg. Regina, like Winnipeg, is the commercial, financial and industrial centre of a large agrarian region--an urban hub that serves the southern half of the province. It also, like Winnipeg, has a large Native population that is segregated in the city, and draws runaways and Natives from nearby reserves which are economically depressed. But unlike Winnipeg, it does not have a mobilized social welfare network that has worked effectively with the Native peoples. Regina, however, like Calgary, is still a frontier town with a similar sense of boosterism. But since it has had a more diversified economy that has escaped the sharp economic fluctuations of the petroleum industry environment, prostitution has remained a very viable business in the city throughout the 1980s. Like Calgary, moreover, the police still retain a tolerance towards minorities, and moral and social values, which has marked the Northwest Territories since the advent of the Mounted Police in 1873. But Regina, unlike both of its satellite cities of the Canadian Pacific Railway

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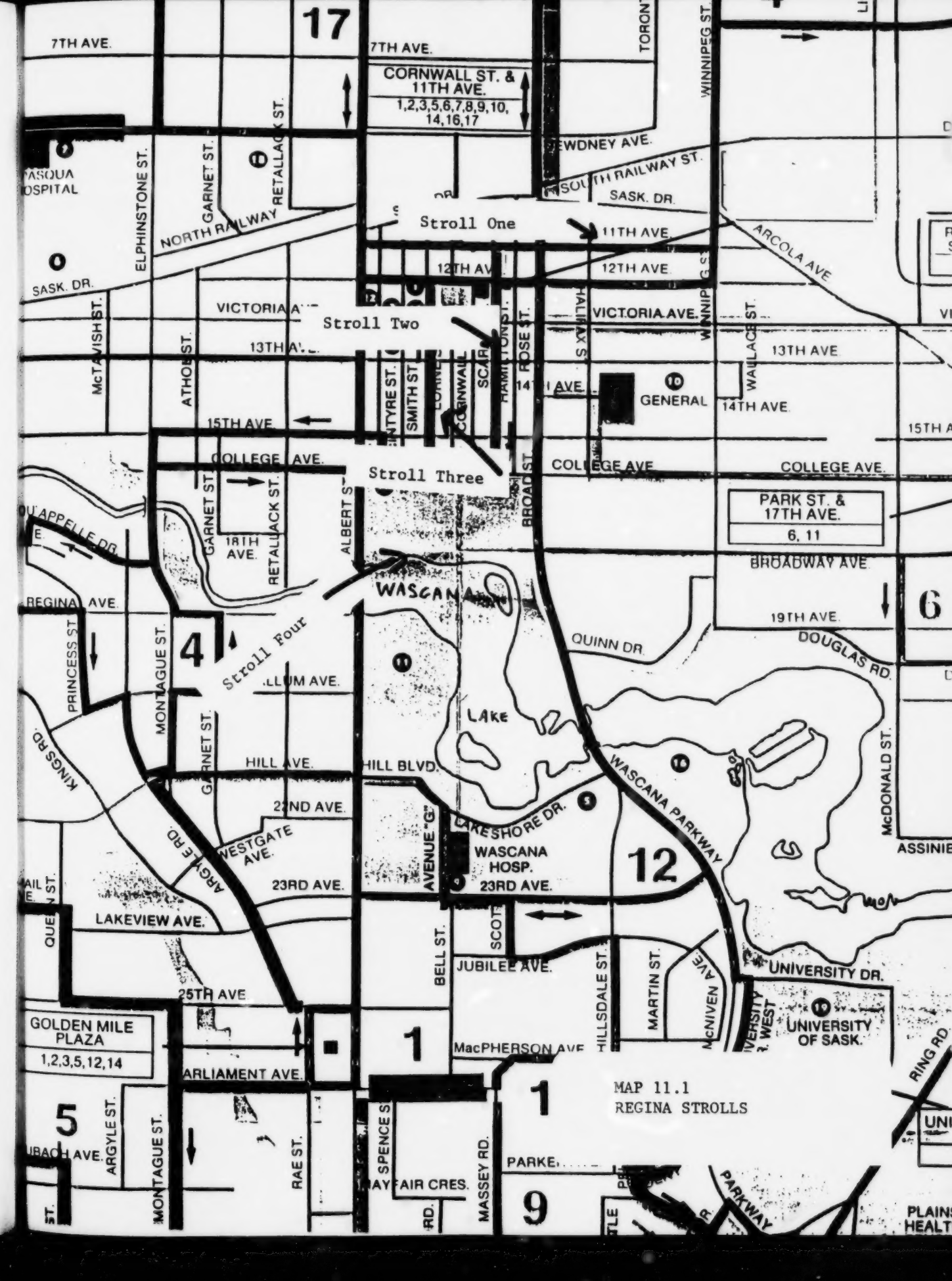
[1] The Report of the Special Committee on Prostitution and Pornography (Ottawa, 1985), Vol. II.
[2] Melanie L. Lautt, Project T.A.P.--Towards an Awareness of Prostitution, (Ottawa, 1984).

and the Trans-Canada Highway, has not had a discrete profession of prostitution. The strolls occupy the centre of core neighbourhood and downtown shopping areas, and therefore provide a very visual workshop for the study of the implementation of Bill C-49.

The Strolls

There are three strolls in the capital city (see Map 1). Stroll One-- which will be identified as Broad & Toronto--is bordered by Broad or Osler and Toronto Streets, and Saskatchewan Drive and 13th Avenue. It is centered just outside the downtown core in an old residential district. Worked by Native female hookers aged fourteen to forty-five, according to police this stroll counted twenty-five to thirty-five women on an average summer evening, half of that on our autumn tours, and eight to ten in the winter. The women were local people, economically depressed, who lived in the city and reserves to the east and northeast (see Map 2). Most of them were indentified from the police records as younger women under the age of twenty, which was a considerably younger average than those in Calgary and Winnipeg. According to the police, they were employed by their husbands or pimps, and hooked for subsistence. Living standards were poor, much of their income went to alcohol and drugs after expenditures on the barest necessities, and some of the women who have been studied by social welfare workers had previous incestuous relationships in the home. They were dressed as blue-collar workers, their prices were low (ranging $30, $60 and $100), and according to interviews they were willing to sell their services in a currently depressed autumn season for even lower prices. Because these services were sold in a central city neighbourhood, and as the business had increased in numbers and area over the past eighteen months, the stroll has become extremely contentious. It was highlighted recently with a fight between a housewife (mother of seven and grandmother of nineteen) and a prostitute on a street corner for control of the neighbourhood streets and sidewalks. As a result, activity on the stroll has caused soliciting to become one of the major topics in the city's newspaper (The Regina Leader-Post), and on radio and television talk shows, which are discussed below.

Stroll Two comprises Broad and Rose Streets between 13th and 11th Avenues, and will be identified as Broad & Rose. This is a downtown, hotel-strip circuit, which includes the major city hotels and the adjacent parking lots for downtown shoppers. The hookers were White and Black women, dressed as fashionable white-collar workers. In their late teens and twenties, most of the women we met were from out-of-town on the Western Canadian circuit. The stroll had some ten to fifteen hookers on an average summer evening and on our autumn tours, and four to eight in the winter. The business was a relatively brisk and lucrative trade, especially during the summer months, and the prices were consistent with the Calgary rates ($60, $80 and $100, and up to $150 for some).


7TH AVE.
CORNWALL ST. & 11TH AVE.
1,2,3,5,6,7,8,9,10, 14,16,17
ELPHINSTONE ST.
NORTH GARNET ST.
RETALLACK ST.
NORTH RAILWAY
SASK. DR.
Stroll One
11TH AVE.
12TH AVE.
ARCOLA AVE
VICTORIA AVE.
Stroll Two
McTAVISH ST.
ATHOL ST.
13TH AVE.
14TH AVE.
15TH AVE.
GENERAL
COLLEGE AVE.
Stroll Three
PARK ST. & 17TH AVE.
6, 11
BROADWAY AVE.
WASCANA
REGINA AVE.
Stroll Four
19TH AVE.
QUINN DR.
DOUGLAS RD.
PRINCESS ST.
MONTAGUE ST.
Lake
KINGS RD.
HILL AVE.
HILL BLVD.
WASCANA PARKWAY
McDONALD ST.
22ND AVE.
LAKESHORE DR.
WESTGATE AVE.
ARGYLE RD
AVENUE "G"
WASCANA HOSP.
23RD AVE.
LAKEVIEW AVE.
BELL ST.
JUBILEE AVE.
UNIVERSITY DR.
MARTIN ST.
McNIVEN AVE
UNIVERSITY OF SASK.
25TH AVE
GOLDEN MILE PLAZA
1,2,3,5,12,14
MacPHERSON AVE
PARLIAMENT AVE.
ARGYLE ST.
MONTAGUE ST.
RAE ST.
SPENCE ST.
MASSEY RD.
RING RD
MAP 11.1
REGINA STROLLS

Due to the general economic prosperity which had benefitted workers in agriculture and small industry in the southern half of the province since 1982, there has been little pressure to discount. There were signs, however, as in Calgary, that the solicitation business was beginning to worsen. The women reported that in recent months the number of dates had declined, and the number of bad dates had increased. The stroll was also very visible to the public, and the continued high level of activity on the two major streets of Broad and Rose has contributed to the on-going public debate on soliciting. Together, the two female strolls had counts in the range of forty to fifty on an average summer evening. Given the city's population of 177,000, the number of hookers on the streets per capita was nearly four times that of Calgary and even more than that for Winnipeg.

There are two male strolls in the city. Stroll Three comprises Scarth Street between 14th and 15th Avenues. This is a downtown stroll, along a street bordered by parking lots on one side and apartment buildings on the other. The stroll is a small one near the club 'Rumours', with no more than a few male hustlers, and has not presented any problems to either traffic or to local residents. Stroll Four is in Wascana Park, down from College Avenue between Wascana Drive and the lakefront. According to the Regina Police, there were over a hundred hustlers looking for business from time to time, but there has been no attempt either to identify them or to make formal counts. One member of the vice squad stated that so many of the males were 'window shopping' that accurate counts of actual 'working' male hustlers would be impossible. The hustlers were regarded to be generally free of the problems of alcohol, drugs and theft, and have caused no problems to the public or law enforcement officials. The result of this profile is that, as in Calgary and Winnipeg, they have been given little formal attention.

The Police and Law Enforcement

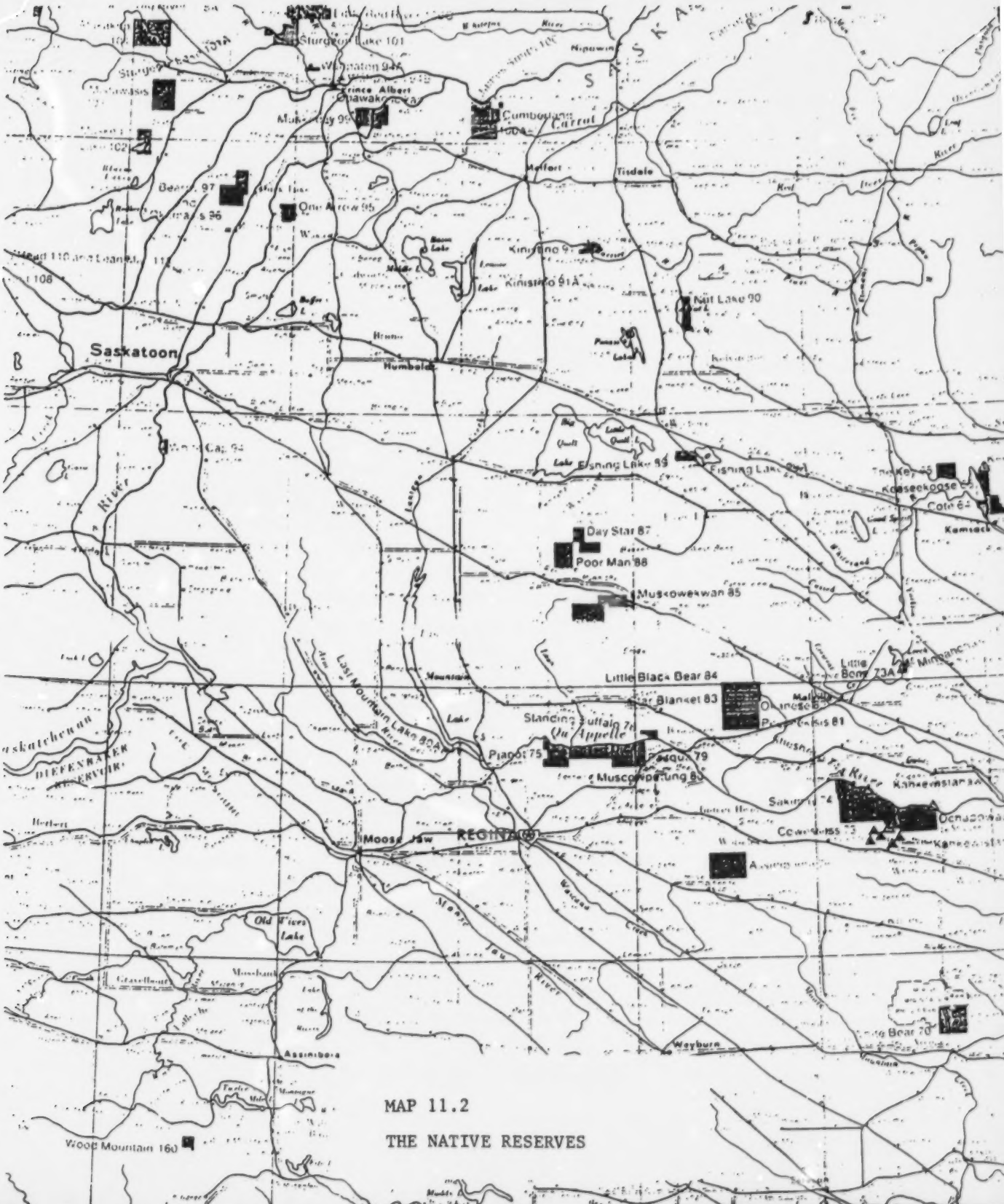
The major figures in the Regina police force have been members for several decades. Prostitution falls under the duties of Vice and Drugs, and the men who worked in this area and were interviewed included officers who have been on the force for twenty-seven years. In their view, the soliciting business has increased since 1982, and has changed even more since the Bill came into force in December 1985. Soliciting has spread beyond the confines it used to occupy, and has moved deeper into core neighbourhoods and hotel areas. Increased demand has brought a more vigorous trade, and with it more hookers and higher prices. The increased demand has come from farmers in the surrounding regions who drive into town for equipment, agricultural shows and business from spring through autumn, and have money to spend. This is why prices have risen from forty to fifty percent since 1982 and why there has been a significant increase in female hookers per capita. While the city was perhaps unaware of the cause, the situation has led to a higher public concern with the solicitation business.

The female hookers comprised two general groups in Strolls One and Two, respectively. According to the police, the white and black women in Stroll Two were well organized. Even if a pimp was flushed out by police or murdered by a rival--as occurred once last year, his place was quickly taken by someone else, and the structure of the territory was left intact. The stroll was managed they thought by approximately two black pimps. The pimps had become more visible in Regina since since C-49, but the women interviewed would not discuss them. The women claimed to make good money--$600 on a successful afternoon or night, and the police reported that they stayed in good hotels, ate in some of the best restaurants, and frequented the beauty parlours. Most of the women interviewed said they traveled on a set prairie circuit that included Winnipeg, Regina, Saskatoon, Edmonton and Calgary, and sometimes Vancouver and Victoria. Since social workers reported that they were generally not well educated, it is difficult to imagine alternative career possibilities that would provide them with a similar standard of living.

The Native women in Stroll One were largely 'free-lancers'. According to the police, they were not well organized, and most of them worked for their husbands or boyfriends who were usually unemployed. The pimps on this stroll were visible, as we observed, but not as consistently as on the second one. The police related that when a woman was arrested and sentenced to jail, the male often made a sister or daughter go into the street to take her place and maintain the family income. Most of the Native women began the business in this manner, and then acquired drugs--which in turn hooked them and their families to continue in the business. Because there are a lot of Native reserves in the region,[1] eastwards along the Qu'Appelle river valley (see Map 2), social workers believed that Native hookers would always be here as long as their economic problems persisted.

The pressure to arrest and prosecute comes from a variety of factors. First, because the business takes place in the downtown core and its neighbourhoods, there are opportunities for conflict. Unlike Calgary, the Regina strolls are located on major arteries. Second, the occasional conflicts of the past have been telescoped since the spring of 1986, when the local CBC news media brought in portable TV vans to expand their news coverage. Thus it is possible for a TV news crew to be on the scene interviewing participants and witnesses before the police arrive, ensuring maximum publicity on the evening news. Third, there are a number of strong fundamentalist religious groups in the city who have mounted write-in campaigns to the mayor and city councillors when they see such news programmes. Mayor Larry Schneider, who is a Regina man, has stated publicly that he could respond by

[1] Especially Paipot, Standing Buffalo, Muscowpetung, Pasqua and Assiniboine, which are within an hour's drive of the city.



MAP 11.2

THE NATIVE RESERVES

hiring more police personnel and obtaining more charges and arrests; but he held that this would not resolve the problem. Therefore, the media was a prominent catalyst behind the public pressure for more enforcement of the laws concerning prostitution.

In 1987, the police Vice and Drug Squad was devoting ninety percent of its work to prostitution and sexual assaults, although prostitution was the major preoccupation. The officers have tried to control it, but the business has become too large. The best they could do is place the four teams of sergeants on the strolls once every two or four weeks, Wednesdays through Sundays. The work load consisted of sexual assault investigations Mondays through Wednesdays, working the strolls Thursdays-Saturdays, and issuing the remaining warrants on the last day. Their major tasks were to develop a good rapport with the women on the street, photograph them frequently with the polaroid cameras carried in their cars, and issue charges and releases. As long as the women provided their ID's, and went along with the arrests as a price of doing business, they were left on the street. They were only apprehended when they failed to pay their fines, were involved with other complaints, or had a warrant out for their arrest. The method of enforcement used to secure this partial measure of control has worked successfully (this will be discussed in full later). One area they have not been able to pursue, however, has been the charging of dates. Since the law regarded customers as equally culpable, the squad began to charge them in spring 1987. But when two hookers on the street were murdered, and others assaulted and robbed, the unit decided, as in Calgary, that there was too much risk for the female officers to pursue the customers further. Therefore, they ceased to be a focus of enforcement.

The violence that has become associated with the soliciting business has increased significantly since the summer of 1987. According to the police, this has occurred in part through its relationship with the drug trade--which has led to several murders, and through robberies and sexual assaults which may be a result of serial crimes. In a sense, C-49 and its attendant publicity in the city (which is discussed later) has made the women 'disposable'. These crimes have increased the intensity of the public concern, and the force was becoming equally worried. It would like to solve some of the crimes to take the pressure off the women on the streets, some of whom we interviewed said they now work in fear of their lives. This violence, however, has also as we have found been part of a more general trend of violent crime in the city that has increased in the last five to six years (see Table 11.4). Most of the Natives, the police said. were armed with knives, and at least half of the men in a downtown bar would be wearing them. With a large number of people looking for fun and trouble in the streets after 10:00 PM, the squad had patrol shifts of 6:00-8:00 PM to 3:00-5:00 AM. The male hustlers, however, experienced none of these trends, and as in Calgary and Winnipeg they were only arrested when there was a specific complaint against an individual.

The police have had no difficulties with the Crown prosecutors and the local Provincial Court. The great majority of the cases have been successful, but this has not alleviated the problem. The Social Services agencies and organizations have been cooperative, but they only handle those women who want to be off the street and out of the profession. And Family Services already has more clients than it is able to handle. Thus these organizations are not attuned to the dilemmas faced by the hookers. The Indian Affairs Department did not see the Native prostitution problem in terms of its causes, and neither did it seem able to deal and work with the women in their demographic and social context. In this regard, unlike Winnipeg, there did not appear to be any existing means or institutions to resolve either the concerns of the public or the needs of the hookers, apart from some private community organizations which will be discussed below.

Prostitutes and the Police on the Strolls

The information in this section was obtained from several nights of riding with the Vice and Drug Squad, and listening to--and discussing the business with--the women who were invited into the squad car for IDs, photographs and questioning, in addition to our own strolling. These were cold October nights, and reflected conditions which prevailed from autumn to spring. The busiest times were around the noon hour, and from 9:00 or 10:00 PM to 1:00 or 2:00 AM. On Stroll One, there were a lot of women out for the little business that seemed available. One could stand on the street for several hours before meeting a date. In comparing those identified on two different weekends, one officer found that of the fourteen noted on one weekend and the twenty-two on another, only eight were the same women. Many came out for the occasional night when the money was needed, which made it difficult to maintain a good account of the Native women. On Stroll Two, many of the women were young, aged sixteen to eighteen. While they may have waited a half--or one to two--hours for a date, nevertheless they attempted to keep their prices firm. Thus an invitation for a chat in a warm squad car was usually inviting for the women on both strolls. As a result, the officers knew many of the regular women well.

We observed that the women in general seemed to accept the Regina police. Some of the women said that they were the best in the West. This confirmed the observation made by the Working Paper on Prostitution in 1984.[1] Despite the change in the law, the police were still protective of the hookers. This relationship, however, assisted the flow of information between the women and themselves that helped to make the enforcement process to provide arrests, prosecutions and convictions successful. The procedure consisted of a sergeant going to a makeup

[1] Project T.A.P., The Prairies, section two.

artist in the afternoon for a diguise (such as a cowboy), renting a vehicle (such as a pickup truck), and working closely with his partner in the squad car. The cowboy would drive up to a corner, look over the women, and then one of them would walk up to him and say something like, 'What are you doing?' He would reply, 'Looking around', and she would ask him if he'd like a date, and then how much money he had. He'd say '$50', and she'd reply with what she would provide for that sum (as, a blow job). He would say 'that's too much', and then drive off. Calling his partner on the intercom, he gave him a description of the woman with the location, and went on to his next prospective date. His partner then drove to the scene (about a half-hour later), and when he located her, pulled up next to the woman and invited her into the car for an ID check and a new photograph for his 'ditch' file (to identify women left in a ditch to die). They chatted, the photo was taken, and he phoned in her name to central control to verify her identity. He then left her, called his partner on the intercom, and they would meet in a parking lot to corroborate the details. The cowboy would see the photograph from the polaroid, certify the 'make', and then provide the details of his encounter on his tape recorder. His partner would write up a charge for soliciting, and if he could still find her serve a charge for violating s. 195.1. A court date was set at a convenient time for three to four weeks in advance, and she would usually appear, not contest the charge, and pay the fine. We were impressed by the efficiency and success of this programme from what we observed on the streets and in our inspection of the prosecution and court records.

There were several important aspects of the enforcement process which the officers said they had to be careful to observe. These aspects had been carefully set out for them by the Crown prosecutors. First, the language used by the officer posed as a cowboy must be selected carefully. The invitation for a date must be made by the woman, and he cannot indicate what he wants to do. If she asks him if he is a policeman, he must move on; and if she asks him to do anything, such as 'touch my breasts', he must move on as well. In every instance, he must also be careful to protect his identity in order to preserve his disguises from one evening to another. Second, his partner has a number of alternatives when calling the woman into the car. If she refused to cooperate in presenting an ID, or have her picture taken again, he could charge her with 'obstructing justice'. But he had to be careful to protect the disguised officer who was still on the stroll. He may also have had to arrest her on the spot if his call to the central command post revealed a false ID or warrants out for her arrest. In that instance, she would be brought in, booked and jailed until bailed.

The enforcement process was usually performed on one night a week by one of two alternate teams.[1] In the end, a team as a matter of policy had to pay for their

[1] This is quite different than Calgary, which has only a few stings per year. With c. 300 annual

night's expenses--including the cost of the makeup artist, the car rental, etc--from the proceeds of the fines from the charges issued. This usually meant the necessity of charging seven to eight women for a night, a figure which on some nights may have required work very late into the morning hours to complete.[2] Therefore, the small fines given upon uncontested charges under C-49 have impacted negatively upon the work of the police.

The prosecutions under Bill C-49 have been regarded by the police as very successful. The system of charging and serving, and the woman cooperatively paying the fine assessed, has caused over eighty percent of women charged to plead guilty and pay the fine. The courts have levied the amount of the fines, moreover, at an average sum of $250 with little variation concerning the number of charges the convicted woman has accumulated. This has led some women to fail to appear on the summons date, accumulate several charges, and only appear before the court when they are finally picked up on a routine patrol, found with a number of citations against them, and served a warrant for their arrest. Upon appearance, they then plead guilty to all the charges and pay the fines in a lump sum. The judges have generally not fined the women more heavily for successive charges. Nonetheless, the work of the police and Crown prosecutors have not been affected by this process.

As a result, the officers made several suggestions for a revision of Bill C-49. First, they want the fines to be specified and increased from $250 to $500, $1000 and $2000 for subsequent offences. This would, they said, take money from the pimps and not the women, and counteract the economic arguments used for the support of the profession. Second, they would like to see the judges render progressive fines consistently in sentencing those convicted. Third, they would prefer a system of definite and indefinite sentences. For example, a definite sentence of thirty days in jail--specifying that the sentence be served in an alternative 'caring society' such as a half-way house, or a sixty day indefinite sentence, would make time sentences a more effective means to deal with the problem of prostitution, and perhaps even assist some of the women in leaving the street. The current law works, they held, but if it was toughened there would be less prostitution, resulting in a downsized business and fewer serious attendant problems.

These problems included sexual assault and rape by both individual men and male gangs. Native and white women reported grisly stories to us of individual and group sexual assaults and rapes. The men had committed multiple offences, and

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arrests under s. 195.1, this amounts to c. 40 stings per year.

[2] It is surprising and a tribute to their ingenuity, that such a small force can disguise its actors without discovery for such a continuous, on-going enforcement process.

some of them carried shotguns under their truck seats. According to the police, they tended to use different vehicles, thereby precluding easy detection. Police policy was to have the women provide details for an artist's drawing, which was then corroborated by others, photocopied, and distributed to the women on the street. While two gangs had been summoned and set for trial for sexual assaults and rapes, on one evening a member of one of the gangs out on bail was identified as assaulting one of the women. While good relations between the police and the women allowed progress to be made in the detection and apprehension of such men, the problem was a significant one, and some women who were interviewed conducted their business in a state of fear.

The Crown Prosecutor

The Crown prosecutors believed that there have been no major changes in the business of solicitation in Regina over the years. What was new since the passage of Bill C-49 were several important side-effects in the last eighteen months. These included more juveniles on the street, sexual assaults of the hookers by customers, robberies of customers by pimps and hookers, and more charges laid and prosecutions made. The existing legislation has made prosecutions more likely, and has increased them--and the resulting convictions--dramatically. The Crown office handled about forty C-49 and related charges a month,[1] and the only case it lost was when a police officer could not identify the woman. The prosecutors have had good relations with the morality section of the police, and have had no difficulties with evidence based on covert or undercover operations and surveillance.

With regards to the legislation, they felt that the major problem with prostitution was to keep the women off the street, and that C-49 did not address this issue. They believed that the problem would have been alleviated had recommendations of the Fraser Commission been included in the Bill.[2] In terms of specific sections, they would like to see section 1J of 195 of the Criminal Code (the procuring section) changed. Currently, they have to prove that the customer knew that the woman was a hooker, a reverse onus clause that requires the necessity of corroboration. This should be changed to define procuring as living off the avails to receive money by way of prostitution, which they claimed would be easier to prove in a court of law. What was needed, to their minds, was a continual process of prosecution and conviction. Any further legislative changes to promote that would be beneficial to the purpose of the Bill, even if the Bill did not address the larger issue.

The trial of women under the Bill, according to the prosecutors, varied

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[1] A total of some 480 per year, suggesting that c. 60-70% were or C-49.

[2] The recommendation that would allow hookers to work out of their own homes.

depending upon the person sitting on the Bench--especially with regards to sentencing. A liberal judge would give a discharge for the first two or three offences, and a jail term for the fourth and fifth. A moderate judge would give a fine for the first offence, and jail terms for the others. And a conservative judge would give jail terms for the initial offence. The recommendation of the Crown was similar to that of the police: that sentences be progressive and given with more consistency. The Crown advised the following schedule: a discharge for the first offence, a fine for the second, and fines and jail terms for the others. The Crown also would also suggest raising fines progressively, but to $1000 maximum, thereby increasing the punishment for multiple offenders. With regards to hustlers, the Crown regarded them as unproblematic, and therefore not requiring any prosecutorial energy even though in law they were equally culpable. The prosecutors had not encountered them, and the only two they knew of were transvestites. In general, the Crown's office was able to cope with the current caseload without difficulties, and delays in the courtroom were minimal. The Provincial Court was down to a two-month wait, and more serious delays at the Queen's Bench had no impact on their work with regards to prosecutions under C-49.

In general, the community wanted more prosecutions, and because of their complaints, the police and Crown prosectors were giving them just that. But to what end? The hookers were still on the streets. What was of more concern was the dramatic increase in instances of sexual assaults. Many customers would not believe a hooker's price--or that she had one, and thus some men would disagree or argue, become aggressive and commit a sexual assault. Other men simply invited women into their cars for the purpose of a sexual assault. It appeared to the prosecutors that dates believed hookers had a diminished credibility, and that hookers would not accuse them of a sexual offence or give evidence acceptable to a court of law.

The Criminal Statistics

The following account of criminal statistics relating to criminal offences and Young Offenders in general, and prostitution and soliciting in particular--for both the City of Regina and the Province of Saskatchewan--has been taken from the Annual Reports of the City of Regina Police Service, and interims, 1977-87.[1] In addition, we drew a random sample of the police case files for female and male offenders, which included the dispositions from all charges in the court records. Information from these files has been summarized in Appendices 1-2 at the end of this chapter.

Unlike Alberta or Manitoba, the provincial statistics of arrests for

[1] The interims used were the provisional sheets for 1987.

prostitution in Saskatchewan reveal a remarkable impact of Bill C-49 when it came into force in January 1986. Total arrests increased from a sum of 23 in 1985 to 427 in 1985, an increase of 1756%.[2] As documented in Table 11.1, the city of Regina accounted for 303 of the 421 arrests, or seventy-one percent of the total arrests in the province under the new Bill. Thus arrests per capita in Regina were even considerably higher than those in Winnipeg. While the cities of Prince Albert and Moose Jaw had--and still have--a prostitution business, no arrests were made in those areas due to a lack of staffing and prosecutorial energy. Arrests in the city of Saskatoon were one-third that of Regina in total numbers and one-eighth per capita,[3] reflecting the more depressed state of the business in the northern city which lacked the generally high level of economic prosperity of the southern portion of the province.

[2] This includes undoubtedly a dramatic increase in the number of multiple convictions, which is discussed further below.

[3] The population of Saskatoon was approximately 150,000.

Table 11.1

Prostitution Arrests in Saskatchewan (Frequencies)

City	1985	1986
Estevan	0	0
Moose Jaw*	0	0
Prince Albert**	0	0
RCMP (Rural)	2	6
Regina	6	303
Saskatoon	15	118
Weyburn	0	0
Totals:	23	421

* A large number of prostitutes, but no vice squad and thus no charges.
**A few prostitutes, but no vice squad and thus no charges.

The criminal statistics for Regina from 1977 through August 1987, as provided in Table 11.2, reveal this impact of the Bill from a longer perspective. Total charges for major criminal offences under the Criminal Code were in the 12,000 range for 1977-79, 16,000 range for 1981-83, and 18,000 range for 1984-87. Except for 1977, prostitution offences counted for less than .03%. Total sexual offences, however, increased at a far greater rate than the rate of total criminal charges throughout the decade.[1] With the introduction of Bill C-49, prostitution charges rose from the previous average of four a year in 1978-85, to 303 in 1986 and 352 in 1987--which was two percent of the total criminal charges. Moreover, sexual offences continued to increase at the same twenty percent rate as prostitution offences for 1987 over 1986, reflecting the growing general concern over both prostitution and sexual offences in the city.

[1] The high level of sexual offenses in Regina prior to C-49 was contrary to the situation in Calgary, and thus the high current level may not reflect any impact of the Bill,

Table 11.2

Criminal and Prostitution Statistics for Regina (Frequencies)

Year	Major Criminal Code Offences	Prostitution Offences	Sexual Offences
1977	12,953	28	52
1978	12,185	6	56
1979	11,300	1	57
1980*			
1981	15,367	3	75
1982	16,166	2	93
1983	16,042	5	162
1984	17,454	2	139
1985	18,145	6	166
1986	17,295	303	152
1987	12,234	352	120**

*The statistics are missing for 1980.
**For January through August 1987.

A surprising statistic concerns the criminal charges against Young Offenders, which are given in Table 11.3. While the number of charges against them (as Juveniles 1978-79, and Young Offenders 1985-87) increased forty-six percent in the decade, sexual and prostitution charges have remained fairly low, although maintaining significant increases in each of the recent years of 1985, 1986 and 1987. The latter year revealed an increase of ten percent in Criminal Code offenses per annum over 1986, and twenty-four percent in prostitution offenses, suggesting that a new trend might be emerging, and providing substance to the current concerns being expressed by those persons working with social service organizations. However, as we observed in Calgary, the change in charging of younger persons may reflect greater police attention to young persons. Even allowing for this, juveniles comprised only one in twelve of prostitution charges in 1987, although one in six were the victims of sexual offences.[1]

[1] Based on statistics from Regina Police Services.

Table 11.3

Criminal and Prostitution Statistics for Young Offenders in Regina

Year	Criminal Code Offences	Prostitution Offences	Sexual Offences
1978	1001	0	4
1979	915	0	2
*			
1985	1459	1	15
1986	1987	25	22
1987**	1457	21	18
Totals:	6819	47	61

* No data for these years.
**For January through August 1987.

The figures for all criminal charges and the numbers of law enforcement officials per capita presented in Table 11.4 suggest that the level of policing is not as high as it has been. For example, while the number of criminal charges per capita of the city's population rose only nine percent from 1977 through 1982, the number of police officers per capita improved by the same rate. As criminal charges remained the same per capita through 1986, however, the number of police officers per capita actually declined by four percent. This may have been an important aspect of the public's perception of policing during the past two summers, where the charges laid were forty-four percent higher for the months of July-August than they were for the months of November-April. In general, Criminal Code offences have levelled off in the 1980s; but the shift to more violent crimes, and crimes which have a higher public profile, has affected the public's perception of the law and its enforcement.

Table 11.4

Police Statistics for Regina

Year	Police per Capita	Criminal Code Offences per 100,000
1977	1/530	13,909
1978	1/508	13,570
1979	1/499	13,103
1980	1/486	14,016
1981	1/492	15,840
1982	1/482	15,334
1983	1/501	14,807
1984	1/504	15,968
1985	1/508	15,830
1986	1/506	15,161

Note: Complaints by seasons were as follows:
November-April, c. 4500 per mo.
July-August, c. 6500 per mo.

Statistics concerning individual female hookers, however, suggest a profession that is more deeply seated, and closely attuned, to the world of criminous behaviour than the statistics for prostitution-related charges reveal. An examination of the case files of women charged under Bill C-49 in the calendar year of 1986 (see Appendix 1) bears out these suggestions. The files reflect those women who were charged in the year, and the files were then backdated to include all criminal charges and dispositions which had been ascribed to individuals in Regina from the beginning, and then updated to the present. Thus they represent a microcosm of the profession as of October 1987.

Several interesting conclusions can be drawn from the sample files which have been researched in Appendix 1. Of the eighteen women, eleven had a criminal record that was more than three years old, eleven had been charged for violent crimes, thirteen had been charged for other offences, and only four had committed the single offence of soliciting. Each woman had an average of nine total charges, of which an average of four were from soliciting. Assault and theft were prominent charges for these women, and alcohol and drug offences were often included. Therefore, over seventy percent of the female hookers can be said

to be recidivists with an extensive criminal record.

The disposition of these cases was also interesting. Only thirty-one percent of the charges led to convictions with fines, the majority of the charges resulting in withdrawals, stays of proceedings (which were never concluded), and discharges under various forms of probation. The fines for soliciting, moreover, were equally scattered from sums of $100 to $1000, with most of them in the range of $200-$300. Moreover, there was seldom any progressive use of the fine. A woman was usually fined in a relative range for herself no matter how many soliciting or other offences she may have confessed to or been convicted of. In fact, it appears that the courts were as lenient on women for soliciting as they were for assault and theft.

The customers had a very different profile from the women who have been examined above in the same sample, as given in Table 11.2, even though the purpose of the law was to charge them equally. Here there were eighteen persons also, two of whom were hustlers who had very heavy records stretching over many years--including violent offences. They were also frequently fined and jailed. The sixteen customers, however, who were charged with obtaining the sexual services of female hookers, were citizens with relatively clean formal records. Thirteen of them had no other charges of any kind, and only two had ever been charged with commiting a violent offence at any time in the past. Most of the other charges they had were alcohol-related. While over ninety-five percent of female hookers were convicted, under seventy percent of the customers charged were convicted, and the fines levied were very consistent; except in two cases, the fines were either $200 or $250 per person. In addition, few of these men could be considered recidivists, and none of them were caught on the street again. Whether this was due to the lack of stings for customers is a question the criminal statistics cannot answer.

The Women and the Profession

A number of case studies were presented in the report of the Working Papers on Pornography and Prostitution in the prairies under the heading of 'The Life',[1] and since then by a local researcher and news reporter.[2] Thus this report will not attempt to duplicate those studies, but will provide some general observations on the women who were the major focus of the implementation of Bill C-49 in Regina. The observations will include the subjects of the practice of the business, peer relationships, and the womens' observations on dates, the police, social services organizations and the larger community.

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[1] Project T.A.P., Prairie Region, section three.

[2] These are drawn from the case studies written by Ann Kyle in April, 1986.

As noted earlier, the women who worked the strolls in Regina fell into two very distinct camps: the Natives, and the whites and blacks.[1] According to both the police and social workers, the former women tended to have a background of sexual experiences within the family from their early teens, which was complemented with alcoholism and in some instances with drugs. Lacking education, jobs and motivation, their family ties and background often influenced their profession, and hooking was one employment alternative in which they had physical experience and ready access to the street. Most of the women whom we engaged in conversation seemed to possess considerable savvy, but they were shy, uncomfortable, and sometimes embittered with regards to the outside world.

The White and Black women, on the other hand, seemed to have more pride in themselves and in their work, as a profession, and a few of them were well educated. Their backgrounds encompassed a very wide range of socio-economic conditions, and personal circumstances seemed decisive in bringing them into the business. While they talked of making good money, police and social workers believed that little of it seemed to find a useful home. They appeared to be trapped by the attractions of the profession without being able to utilize them to their personal advantage.

The stripping, exotic dancing, and escort services provide other means of employment for women in Regina who are engaged in soliciting. In contrast to Calgary, or Winnipeg, there was little stripping or exotic dancing in the city--largely because liquor licenses were not allowed for such establishments. The women were paid $35-$50 for a twenty-minute performance, and could have three to nine performances in an evening. But we observed that the crowds were low, the prices for soft drinks and coffee high, and the establishments looked to be on the slim edge of survival. The shows appeared to have little art or imagination, and the stripping was done in a functional manner. The police said that they have heard that some of the women on the stroll augmented their income by performing in such places in the winter, when the temperature on the streets became formidable. One woman on the stroll actually told us that she had done so, but that the money and audiences were so poor that she gave it up.

The escort services in Regina were not controlled, and according to the local press were very prosperous in the past; a woman could easily make $600-$1000 in a sixteen-hour shift. But the economic downturn which occurred in 1987 has caused a crisis in this business as others. According to the police, some owners have hired outside bikers as gorillas to 'beat up ugly' women who worked for

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[1] These general observations which follow are based on the totality of our research for the city.

competitors, and both the number of services and the prices (due to a price war) have fallen significantly. According to social workers, the women who work these services were different than those of the strolls. They were older (aged 25-35), came from outside of the city, and were White or Black (but not Native). They considered themselves 'trained professionals' who provided good conversation, and used seductive dress, tricks and 'fantasy'. The police believed that they felt safer as a rule than the women on the strolls, and often worked for female instead of male supervisors. Since they have not, however, been studied formally in the city as an occupation, it was difficult to gauge their current numbers, background, or standard of living apart from what has been written in the local press or related by members of the Vice and Drugs Squad or Social Services.

Media Analysis

The daily newspaper of the city of Regina is The Leader-Post, and it has been examined for the time period of January 1984 to November 1987.[1] All the major articles, editorials and letters to the editor were read for morals and sexual offences, and they are assessed below with regards to the time periods in which we have estimated they naturally fall.

The first period occurred prior to the passage of Bill C-49, from January 1984 to November 1985. The subject of prostitution and soliciting received little public attention in the media initially in this period until the spring of 1984, when several news articles and letters to the editor referred to the increasing growth in the numbers of hookers and their ill-behaviour. The Mayor of Regina wrote on April 6 that more than forty women were moving into core neighbourhoods, and three members of the provincial cabinet of Saskatchewan wrote the federal government on the behalf of the departments of Social Services, Justice, and The Status of Women, requesting federal legislation against soliciting. By the following winter, the newspaper's editorials were claiming that while local polls indicated that only one-third of Reginans believed that prostitution was a problem, that the problems of disease, drugs, pornography, abduction, violence and street nuisances were so significant that a federal initiative on the subject was imperative. In March of 1985, a NDP Task Force on Family Stress reported that women on welfare in the province were turning increasingly to prostitution for support, and were using prostitution as an avenue to sell drugs as well. It cited the example of four students at Coteau Range Community College in Moose Jaw, grades ten and eleven, who were prostitutes. The Task Force placed the blame on Social Services for neglecting to find these people housing, jobs, textbooks and incentives to educate themselves for respectable work.

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[1] We utilized the vertical file reference list in the Regina Public Library, the Library's private clipping files, and the Police Service's internal clipping files.

When Bill C-49 was introduced into the House of Commons, Mayor Schneider reported on May 4, 1985, that the Bill, when enacted, would address the city's problems fully, and relieve the streets and sidewalks of the nuisances of prostitution. Thus, the historical development of the Bill was given the same kind of prominence than it had in Calgary. People wrote glowingly about how $2000 fines and six-month jail terms would stem the business. Police Chief Ed Swayze was more cautious, suggesting that the Bill was a step in the right direction, but making no predictions on its impact. Some citizens suggested that the answer was not in legislation such as C-49, but in legalizing the trade--thereby taking it out of the neighborhoods, and turning it into small-scale, licensed business establishments. Others wrote to suggest the creation of an official red-light district; but Mayor Schneider responded that an attempt to do just that on Dewdney between Albert and Broad Streets had failed because the prostitutes would not cooperate (largely because there were no sidewalks and no lighting). He also stated prominently on November 1 that the new Bill would be strongly enforced in the city when it came into force, and that a task force was being established to monitor the situation.[1]

The second period comprised the initial enforcement of the Bill in the months of January and February of 1986. Police Chief Swayze, interviewed on January 9, said that the police had been investigating hookers in the downtown area for six months in anticipation of the Bill, and, like in Calgary, that they would enforce it--giving special attention to the downtown trade. Moreover, he also announced that they had arrested two pimps for attempting to procure two girls aged fifteen for prostitution. The next day witnessed the city police's first sting, which resulted in the arrest of ten female hookers--five of whom were under the Young Offendors Act. When the first trials were reported on January 23, a Native woman aged twenty was convicted and fined $250, and two white women aged nineteen had their cases adjourned by legal counsel. Much interest in these early trials was centered on the vagaries of human nature. For example, Roberta Silzer received fame in the press when Judge I. D. McLellan of the Court of Queen's Bench preferred her testimony over that of her date, who was alleged to have robbed her of $250 after oral sex and intercourse. According to the Judge, she was bright, honest and of good character. And the first date charged under C-49, Robert Louie, received considerable publicity when he pleaded guilty and was given an absolute discharge on account of his sixty-two years in age.

There was, however, a clear difference of opinion on the success of the law and its enforcement. A lead article of February 8 read: 'Once defiant but now

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[1] The Mayor's task force was never established, in spite of numerous later requests (see the further discussion below).

subdued, prostitutes across the country are retreating from city streets where they have long plied their trade and are seeking refuge from a tough new law against soliciting'. The success of the law was reported across the country from Halifax and Ottawa to Edmonton and Vancouver. The business which remained was now considered to be more discreet and less obstructive, and the legislation was hailed as a 'sweet victory' for urban Canada. Some concern was expressed that the law might drive desperate and unskilled women underground, and that perhaps a red-light district, a few licensed bawdy-houses, or a hooker co-op should be considered for these women. Three days later, the paper published a protest by city alderman Randy Langgard, ward six (downtown), who referred to the string of complaints he had received from residents against the continuing high level of soliciting. He demanded to hear from the Police Chief as to what approach and manpower would be committed to deal with the problem. A related concern was expressed in a letter from an irate homemaker against the increase in escort ads in the newspaper, including one from 'Playboy--we specialize in blondes'.[1]

The summer of 1986 can be seen as the third period, and it was one of relative calm in the media. Much emphasis was given to the judgment of Provincial Court Judge Kenneth Bellerone which upheld the Bill against the Charter of Rights.[2] As the paper reported on June 21, the Charter had no clear understanding of what was, or was not, a constitutionally protected expression--and thus it was inoperative on this subject. The press was also confident in the new manpower given to the enforcement of the Bill by the Police Services. The Core and Ritchie Community Centres were reported to have met jointly to deal with the problems of prostitution, and the police appointed a representative to work with them. The mood in general was one of confidence in the law and its administration, and in the ability of residents and social institutions to work on ameliorating the problems which were part of the personal landscape of the business.

The fourth and final period comprised the background and events which made the summer and autumn of 1987 one of the most contentious on the subject of prostitution in the city's history. The year opened with the controversial case of a Native woman who allegedly took a young native man home for sex, and then with her husband robbed and beat him; a second charge was made for a similar offence against a sixty-one year old man. The counsel for the defendants said that their purpose was simply to give dates a good time, while the Crown prosecutor pushed for conviction and a jail sentence. The couple were convicted on January 7, and the case raised considerable discussion in the press on the problems of prostitution. The police made their first sting of the year in February--arresting

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[1] The Yellow Pages now contain no pictures or blow-up ads, simply the name of the business and phone number.

[2] The case has been discussed and analyzed in the chapter on jurisprudence.

seventeen customers in order to place more pressure on the business. Charges that spring against hookers and accomplices who robbed their customers at gunpoint maintained a highly visible public concern with soliciting prior to the advent of the busy summer season. Therefore, while public opinion of female hookers was favourable in Winnipeg, and of little concern in Calgary, it reached crisis proportions in Regina.

The public focus on soliciting was stimulated in the full report on August 6 of Mrs. Brennan, an outraged mother aged thirty-eight, who fought publicly for stiffer laws and enforcement. She claimed that she was assaulted by a hooker at 8:00 PM on the corner of 12th Avenue and Ottawa Street on the way home from the laundromat with her seven-year old daughter, and one and a half-year old step-daughter, and suffered a broken collarbone. She said that the reason for the attack was her photographing the woman's pimp on several previous occasions. This article appeared on the same day of a report on 'Lawyers for Equal Justice', which defended the use of legal aid for the defence of women accused of soliciting. Shortly afterwards, eleven hookers were tried and convicted, and their appeals on the basis of the Charter were rejected by Judge Bellerose, who on August 19 fined six of them $200 each and sent another to jail for three months.

That local feelings were running high was reflected in an August 22 report of a hostile meeting of residents from the Core Community Group with aldermen and policemen. The residents claimed that the police were not doing enough to clear the streets of hookers, and that the residents should hire the women to solicit on the lawns of the police chief and the mayor. The Chief of Operations told them that the police were limited in the manpower they could provide for such enforcement, that more enforcement in this area would drive the women elsewhere, and that fines upon conviction were too low to act as a deterrent. He suggested that publishing the names of dates in the newspaper would help cut down on the traffic. The conclusion of the meeting was that a campaign should be waged against the dates, and especially their wives, to alleviate the problem. Shortly afterwards, a plan for fighting prostitution in the downtown area by J. D. Harding, E. F. Brown and S. Hohne was reported on August 27. They described the region as a 'drive-up marketplace of sexploitation'. Arrests were up fourfold, they said, but there was no decrease in the number of hookers and pimps who were becoming more prominent. They suggested two-way streets to replace one-way traffic on 12th and 13th Avenues, and a citizen's task force to create and implement a co-ordinated social plan to deal with the problems underlying prostitution: namely, self-help groups for hookers, transition homes for those who wanted to escape the street, and alternative training for employment--especially for the Native women.

Public opinion in Regina, however, unlike Winnipeg, was not necessarily

sensitive to professional interpretations and suggestions such as these. Writing in 'Readers' Viewpoints' on September 4, Irma Probe stated that it was time for the city to set a precedent for the rest of the nation and outlaw prostitution, no matter what that involved by the local and provincial authorities. Lamenting the allied influences of alcohol, drugs, theft, childhood exploitation, and the degradation of the inner city neighbourhoods, she concluded that if society could launch an effective campaign to ban smoking, it could do the same with regards to prostitution. Concerns such as these were the focus of a morning television show on prostitution in Regina that was filmed live on October 9--featuring Brennan, Probe and others including Mayor Larry Schneider.

The position of the advocates against public soliciting was that a city should be 'respectable', a place to raise children without vice and violence. Brennan stated that as a mother of seven and grandmother of nineteen, what she disliked the most was the exploitation of children under the age of eighteen. Unable to sit on her front steps, or to sleep at night, she considered herself and other women and children as prisoners in their own homes. She pleaded for a march on Ottawa if necessary to demonstrate for a new law to make prostitution an indictable offence. If the federal government would not act, then the police should move it off the streets into the bars, and the city should establish a chicken ranch twenty miles outside of town for dates to visit women who still desired to service them.

Mayor Schneider took a longer view. He emphasized how ancient the profession was, that it was not an illegal activity, and that the problems related were not acute. He stated that all the authorities could do was to charge, arrest, prosecute, fine and release. Cities were limited in their jurisdiction, and morality could not be legislated in a free society at any level. The only real solution perhaps was for the federal government to legalize brothels; but as European experience had shown, brothels often became associated with crime, people could not agree on where they should be located, and neither women nor their dates could be forced to use them. The television 'debate', which was actively engaged, reflected the differing currents of anxiety levels and of thought which were prominent in the public mind of Reginans in the autumn of 1987.

Social Service Organizations

A number of persons were interviewed who worked with both private and public organizations concerned with the problem of prostitution and its victims. These included workers of Dales House for short-term juvenile offenders, The Elizabeth Fry Society,[1] the John Howard Society, the Mobile Crisis Centre, the

[1] In Saskatoon; there is no unit in Regina because they have been unable to obtain funding for one there.

Paul Dojack Youth Centre, the Department of Social Services, The Young Offenders Unit of the Police Department, and the Human Justice Department of the Faculty of Social Work, University of Regina. Before describing the role of these organizations in working with the women who have become involved in soliciting, it will be useful to assess topically and conceptually the views which these persons had to offer on the hooker, the problems of prostitution, the role of the police, courts, corrections and the media, the impact of Bill C-49, and possible alternative solutions.

A general consensus of these individuals was that prostitution was a social and economic problem and not a legal one.[1] The city has been affected by the long-term economic decline of the northern region of the province since the beginning of the decade, and more specifically since 1984. The rapid growth of unemployment in the north from the demise of the construction and mining industries, combined with cutbacks in public sector spending, has led to some of the highest unemployment rates in the country with rates of fifty to eighty percent in some communities and reserves. This has caused a movement of the unemployed to the relatively more prosperous agricultural and industrial region of the south. The movement has included Treaty and non-Treaty Natives and Metis from the Prince Albert and North Saskatchewan River areas, and has added to the growth of Native and Metis women in the soliciting business in Regina.

It is within the context of circumstances such as these that social workers stated that no laws concerned with prostitution have ever worked, and none will. Moreover, the general evolution of society towards more single persons makes legislation on this subject difficult to frame and enforce. There have been large numbers of hookers in Regina, and the cause of their growth has been attributed to the development of a rather prosperous mixed economy in the region which has sheltered it from the more obviously visible economic recession which has touched other areas of the prairies in the past. Since the city was one that shuts down very early in the evening, only the hookers, customers and cruising viewers were left on the streets, therefore giving the business a profile that was both highly obvious and troublesome to many people in the local communities where it took place. The nature of the profession's age profile, however, has also contributed to its difficulties.

Many of the persons interviewed also believed that a majority of the hookers were under the age of either eighteen or twenty years. They contended further that there was a tendency for juveniles to enter the trade when they were aged fourteen to sixteen, generally uneducated, lacking in emotional development, and sexually

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[1] The views expressed here have also been confirmed by our own research into the provincial economy in this decade.

and personally naive. Dependent on their pimps and the street, these young women were unable to develop outside contacts or to experience a different social setting. Thus they became victims of alcohol and drug abuse, and eventually of the property crimes which helped to support those addictions. They also became subject to a higher level of violence caused by the pimps upon whom they come to depend, and by the long-term feuds which characterized their society. Often coming from families where they had experienced sexual assault by their fathers, and wife- and child-beating, they might not even recognize the inherent distinctions which were involved in 'rape'. And lacking a basic knowledge of birth control, drug ingredients, or health and social services, they had few learned alternatives with which to turn in time of need.

Most of the persons interviewed had a relatively high opinion of the local police who dealt with the women on a daily basis. Police officers were regarded by some as non-discriminatory, good with hookers of all races, and hard on new entrants to the business in order to keep them out of the city. They were also regarded as having better relations in the past five years than in previous ones. Some of the persons interviewed attributed this to the view that a majority of the police who worked the streets were in their early thirties, were raised in a generation of people who were socially concerned with the world around them, and had some special training in human skills. Thus they were able to relate better to the hookers than to some of the senior staff (who were seen by some social workers as men who would prefer to have the business criminalized and punished with a capital offence). There was also, however, a view that the force lacked incentives for upgrading its human skills, and was split on the subject of how interventionist it should be--and what tactics should be used--in implementing C-49. The desire for a police force more skilled in human relations was also expressed by people from the downtown core community, who wanted to see more police on the neighbourhood sidewalks. But this was only recently been introduced--and restricted--to shopping areas on an occasional basis.

Social workers were equally concerned with correctional problems emanating from the enforcement of C-49. The judges were regarded as playing an acceptable role in administering the law, and considered fair in their treatment of defendants. In recent years they have been seen as less racist in their verdicts and sentencing. A major problem, however, was seen in existing correctional facilities. Over eighty percent of the women were there for the non-payment of fines, and little was done to prepare them for a working and living environment that was different from that of their own.

With regards to the Bill itself, most of the individuals interviewed would like to see it repealed, and the business of solicitation taken out of the Criminal Code. They felt that the Bill has had no impact apart from the enforcement policy

of charging, prosecuting, convicting and fining a large number of women. In fact, it may be viewed as having had a negative impact by causing a rise in escort services which have institutionalized the business, and made the women more susceptible to physical abuse by men. (There was some dispute, however, about the extent of escort services, and the degree to which they were run by outside interests; and it was suggested that some were being managed by women.) Social workers saw future legislation on prostitution directed not towards the criminal justice system, but in assisting the finance of alternative lifestyles organizations, such as those of the Pride Program in Minnesota and the Safe Houses in Toronto and Vancouver--programs developed and run by women's groups as drop-in centres or halfway houses in the neighbourhoods where the business took place.

They also believed, however, that much could be done to supplement the current legislation by private initiatives within the city. The task of enforcement could be mitigated by finding compatible alternatives quickly for young women who entered the business before their trade networks deepened--alternatives where sisterhood replaced pimping. Compatible alternatives were beginning to be developed in the city. Youth Unlimited, for example, is a group of people working out of a north-east location with twelve to fourteen year-old girls (especially Natives). Funded externally, it is recreational in orientation, but strives to combat the problems of illiteracy and unemployment. The Rainbow Youth Centre is a similar organization whose services are primarily restricted to counselling. Dales House is a more permanent establishment for all short-term juvenile offenders, male and female, aged twelve to seventeen. Due to space limitations, however, it could only accomodate thirty persons, and usually just for a few weeks.

The Mobile Crisis Centre, a non-government community group sponsored by the provincial Department of Health and funded by independent agencies, receives referrals from the medical profession, policemen and others, and operates a 'Difficult-to-Manage Client Programme'. Its volunteers work to find women a place to live, a different social network, and schooling or jobs. Their experience has been that it takes ten to twelve months of coordinated effort before they can settle a woman off the street and out of the business.

The problem, however, is that there is no effective public initiative for such programmes, and no support by the city. The long promised Mayor's Task Force, which was proposed in the autumn of 1985, has still not been formed even though there have been numerous requests from private individuals and local organizations. Therefore in Regina, unlike Winnipeg, society at large does not seem interested in committing the funds, energy and public support to develop viable alternatives for women of the street culture. Provincial cuts to municipal grants from April 1987, together with additional cuts effective April 1988, mean

that local communities in Saskatchewan will have even fewer public resources to combat problems such as prostitution than they have had in the past, and must continue to rely heavily on the enforcement of s. 195.1 of the Criminal Code to control soliciting on the city's streets.

Conclusion

The city of Regina welcomed the drafting of Bill C-49 through virtually every stage. Having witnessed the growth of female prostitution in the boom years of 1982-85, and its increasingly high visibility in downtown and core neighbourhood strolls, a study of the press revealed that community leaders perceived in the federal legislation an answer to what they had come to regard as a festering social problem. The fact they alleged that the average woman on the stroll was earning more than $55,000 a year,[1] and the total hooking business over $6,600,000 a year, caused people to write letters to the press condemning the profession as an underground tax haven that was corrupting the ecology of the streets and the socio-cultural-religious values of the community.

The advent of the Bill early in 1986 was met firmly by the local police, who had studied the strolls and developed the capability of the Vice and Drug squad to patrol the streets, identify the women, and charge and arrest them for soliciting violations. Working without an increase in staff, the statistics revealed that they did this successfully with more than 300 prosecutions in the first year of the Bill. Their work, however, did not alleviate the problem. Most of the prosecutions did not result in the higher fines or six-month jail sentences that had been anticipated by the public, but in withdrawals, discharges, stays of proceedings, and low fines of $50-$200. Meanwhile the number of cases successfully prosecuted increased significantly from the summer of 1987--when the Provincial Court upheld the Bill against a Charter of Rights defence. The new fines which were levied, however, still lacked consistency and amounted to small sums from $100 to $300. Therefore, whatever deterrent effect that C-49 was alleged to have did not in fact occur. Perhaps this explains why many of the women we observed had no objections to be identified, photographed, charged or prosecuted under the Bill; they regarded the fines as licensing fees--a cost of doing business.

The problems associated with prostitution which had been encapsulated in the public mind with a lack of legislation on soliciting have not been resolved. Interviews with police and social workers revealed that alcohol and drug abuse continued to be prominent. Pimps in Saskatoon and 'gorillas' in Regina have continued to wage occasional warfare between themselves for local neighbourhood

[1] This is unsubstantiated; the total figure may be closer to $3,000,000 based on our calculations of the realistic wages derived from the street on an average week by the various seasons.

control.[1] Their activities are regarded as unpredictable, and the situation potentially explosive. A large increase in the violent crimes of sexual assault, rape and gang rapes against women by men who may suffer from increased psychological disorders and socio-economic problems, and who see the women on the street as disposable instruments of relief, has also been reported. The result of all these factors has caused intensity and bitterness to develop in the relations between the hookers and their pimps on the one side, and them and the downtown and core neighbourhood communities on the other. This may place an emphasis on the enforcement of C-49 which the police cannot meet. The economic downturn in southern Saskatchewan since 1987 may curtail the growth of the business, and the need to control it, that the legislation could not provide. But it will not alleviate the concomitant problems which have accompanied the recent history of the business in this city, nor provide the women in the profession with a way to leave it and render the Bill obsolete. In some ways, perhaps the ecology of the streets and the temper of the community in Regina have been influenced more by the vicissitudes of socio-economic conditions in a frontier society remarried to private initiative than they have by the federal legislation which its citizens regarded so approvingly in the winter of 1985-86.

[1] The shooting, stabbing, beating and fire-bombing war in Saskatoon, November 3-15, 1985, between rival pimps, was one explosive example.

Appendix 1

Sample of Females Charged Under C-49 in Regina, 1986[1]

Dates	Charge	Disposition
01/86-05/87	Soliciting	$250
	Soliciting	Absolute Discharge
	Soliciting	Cond. Discharge 1 yr
	Soliciting	$300
03/85-03/86	Assault with Weapon	Susp. Sent. 18 mo.
	Poss. of Weapon	Withdrawn
	Robbery	Committed
	Soliciting (5)	2 months each
	Breach of Peace	1 month
	Failure to Appear (3)	1 mo. each; Prob. 1 yr
	Failure to Appeaar (2)	1 mo. each
	Robbery	2 years
05/78-04/87	Theft	Cond. Discharge 1 yr
	Soliciting	$250
	Soliciting	$1000
	Aggravated Assault	Trial Pending
11/84-03/87	Theft	Cond. Discg.; Prob.18 mo.
	Soliciting	$500
	Soliciting	$300
	Robbery	Stay of Proceedings
	Soliciting	Susp. Sent.; Prob. 18 mo.
	Contempt of Court	Susp. Sent.; Prob. 6 mo.
	Soliciting	Stay of Proceedings
10/78-19/86	Theft	Cond. Discharge 6 mo.
	Robbery	Withdrawn
	Attempted Theft	Probation 12 mo.
	Theft	Stay of Proceedings
	Public Mischief	Withdrawn
	Attempted Robbery	Withdrawn
	Forgery & Uttering	Both Stay of Proceedings
	Double Doctoring	Dismissed
	Soliciting (2)	Withdrawn; Stay of Proceedings
10/82-04/86	Poss. Stolen Property	Cond. Disch.; Prob.18 mo.
	Break & Enter w/Intent	Withdrawn
	Theft	Stay of Proceedings
	Failure to Appear	$75
	Soliciting (2)	Stay of Proceedings
	Failure to Appear	Stay of Proceedings
08/86	Soliciting	$200
	Soliciting	Stay of Proceedings
	Failure to Appear	Stay of Proceedings
08/86-09/86	Soliciting (2)	$150 each
	Soliciting	$200
04/82-09/87	Failure to Appear	$250

[1] The Sample was chosen by examining files with surnames staring with "F" and "M".

	Theft	Cond. Disch.; Prob.18 mo.
	Possession of Narcotics	Withdrawn
	Failure to Appear	Withdrawn
	Keeping Bawdy House	Stay of Proceedings
	Soliciting (2)	Withdrawn
	Soliciting	Susp. Sent.; Prob. 2 yrs
	Soliciting	Stay of Proceedings
	Failure to Appear	Stay of Proceedings
	Soliciting (2)	Susp. Sent.; Prob. 3 yrs
	Failure to Appear	Discharged
	Soliciting	Withdrawn
06/82-09/86	Failure to Appear (2)	$50 each; Arrest & Commit
	Poss. Credit Card	Jurisdiction Lost
	Theft	Cond. Disch.; Prob. 3 mo.
	Theft	$100; Prob.18 mo.; commit
	Theft	3 weeks
	Fraud	3 weeks
	Break & Enter, & Theft	6 months
	Breach of Probation	2 nmonths
	Theft	1 month
	Fraud	1 month
	Fail to Appear	Withdrawn
	Soliciting	$100
05/80-04/87	Theft	$50
	Fail to Appear	$100
	Uttering	Withdrawn
	Forgery	Susp. Sent.; Prob. 1 yr
	False Pretences	$25
	Fail to Appear	$50
	Breach of Probation	$150
	Fail of Appear	$100
	Break, Enter & Theft (3)	1 month each
	Theft	Susp. Sent.; Prob. 3 yrs
	Soliciting (2)	Stay of Proceedings
	Failure to Appear	Stay of Proceedings
	Soliciting (2)	$250 each
	Fail to Appear	$50
01/82-06/87	Theft	$100
	Uttering	Withdrawn
	Fail to Appear	Withdrawn
	Uttering	Lost Jurisdiction
	Possession of Weapon	Stay of Proceedings
	Fail to Appear	Absolute Discharge
	Soliciting	$200
	Soliciting	Stay of Proceedings
	Soliciting	Stay of Proceedings
10/86	Soliciting (3)	$300 each
06/86-07/87	Soliciting (3)	Stay of Proceedings
	Soliciting	Stay of Proceedings
	Fail to Appear	Withdrawn
	Fail to Comply	Withdrawn
	Fail to Appear	Withdrawn
07/84-03/87	Theft	Withdrawn
	Soliciting (2)	$125 each

	Theft	$50
	Soliciting	Withdrawn
03/69-08/87	Juvenile Delinquency	Withdrawn
	Liquor Act (3, in store)	$50 (underage)
	Liquor Act (in auto)	$50
	Liquor Act (in store)	$50 (underage)
	Vagrancy	Dismissed
	Vagrancy	Probation 1 yr
	Theft	Probation 1 yr
	Obstruction	Withdrawn
	Poss. of Narcotics	Withdrawn
	Theft	Probation 1 yr
	Theft	Withdrawn
	Possession	$200
	Exceed .08 (drunk)	$150
	Assist an Escape	Withdrawn
	Accessory after Fact	Committed to Trial
	Accessory after Fact	Stay of Proceedings
	Robbery	Committed for Trial
	Possession	$550
	Robbery	Stay of Proceedings
	Fail to Remain	Discharged
	Poss. Concealed Weapon	$250
	Impaired Driving	$350
	Soliciting (2)	$200 each
	Soliciting	$250
03/80-08/87	Theft	Susp. Sent.; Prob. 3 mo.
	Breach of Probation	Withdrawn
	Public Mischief (2)	$100
	Theft	$200
	Possession	$100
	Theft	$400
	Theft	Cond. Disch.; Prob. 6 mo.
	Soliciting	$200
	Soliciting	Withdrawn
	Possession	Not Guilty
	Soliciting	Stay of Proceedings
	Soliciting	Discharged
	Fail to Appear	Stay of Proceedings
03/86-08/87	Assault	Probation 3 months
	Assault	Withdrawn
	Soliciting	Withdrawn
	Soliciting	Probation 1 yr
	Fail to Comply	Probation 1 yr

Appendix 2

Sample of Males Charged Under C-49 in Regina, 1986

Dates	Charge	Disposition
01/81-06/87	Common Assault	Susp. Sent.; 1 yr
	Fail to Appear	Susp. Sent.; 1 yr
	Obstruction of Police	Susp. sent.; Prob. 1 yr
	Fail to Appear	$100
	Fail to Appear	$50
	Poss. Stolen Property	Dismissed
	Poss. Concealed Weapon	Susp. Sent.; Prob.18 mo.
	Soliciting	$250
	Fail to Appear	Susp. Sent.; Prob. 6 mo.
	Breach of Probation	2 months
	Soliciting (2)	6 months each
	Fail to Appear	6 months
	Soliciting (2)	3 months each
01/83-09/87	Mischief	Cond. Disch.; Prob.4 mo.
	Breach of Probation	Absolute Discharge
	Exceed .08 (drunk)	$200;Arrested for non-payment
	Fail to Appear	Stay of Proceedings
	Fail to Appear	1 month
	Exceed .08 (drunk)	1 month
	Fail to Remain (2)	1 month each
	Fail to Appear	1 month each
	Wilful Damage	1 month
	Fraud	3 months
	Fail to Appear	Stay of Proceedings
	Fail to Comply	1 month
	Soliciting	$200 (elects jail 7days)
	Soliciting	Withdrawn
	Theft	$200
	Soliciting (2)	Withdrawn
	Theft	$200
	Soliciting (2)	Withdrawn
	Obstruction	Withdrawn
	Soliciting	Susp. Sent.; Prob. 1 yr
	Fail to Appear	Susp. Sent.; Prob. 1 yr
07/86	Obtain Sexual Services	$250
07/86	Obtain Sexual Services	$250
03/81-07/86	Break & Enter w/Intent	Withdrawn
	Mischief	$200
	Threatening Messages	$100, & Probation 1 week
	Obtain Sexual Services	$250
04/86	Soliciting	Stay of Proceedings
01/71-07/86	Excess .08 (drunk)	$75
	Excess .08 (drunk)	$150
	Excess .08 (drunk)	$400
	Excess .08 (drunk)	$225 & Probation 6 mo.
	Excess .08 (drunk)	$200
	Communicate for Sex. Ser.	$250

07/86	Obtain Sexual Services	$250
10/86	Obtain Serv. of Prost.	Stay of Proceedings
09/86	Obtain Serv. of Prost.	$200
	Fail to Appear	$25
10/86	Obtain Serv. of Prost.	Cond. Disch.; Prob.6 mo.
02/86	Att. Obtain Serv. Prost.	$200
12/71-08-87	Theft	$25
	Exceed .08 (drunk)	$160
	Att. Obtain Serv. Prost.	$300
	Exceed .08 (drunk)	$375 (elects jail 2 weeks)
	Fail to Remain	$200
	Fail to Appear	Withdrawn
	Narcotics Act (3)	$150 each (elects 6 wks)
	Narcotics Act (4)	Withdrawn (RCMP)
	Narcotics Act (4)	1 year
06/86	Sexual Assault	Stay of Proceedings
	Att. Obtain Serv. Prost.	Absolute Discharge
10/86	Att. Obtain Serv. Prost.	$200
12/86	Obtain Serv. of Prost.	$200
05/86	Obtain Serv. of Prost.	Cond. Disch.; Prob.6 mo.
11/86	Att. Obtain Serv. Prost.	Absolute discharge

XII. CONCLUSIONS AND RECOMMENDATIONS REGARDING BILL C-49

Our report has covered a wide area of investigation to determine the effects of Bill C-49. We have drawn on the knowledge and experience of numerous respondents in coming to our conclusions, and make statements here we believe to be of general relevance. We have also advanced some proposals for change which we hope will assist parliament and the courts in their review of the current law.

I. Overall Conclusions

Has the law contributed to a decrease in street solicitation?

This was the first of a series of very specific questions raised by the Department of Justice in its effort to establish the impact of Bill C-49. In our discussion, we will attempt to answer these questions, sometimes editing the originals for simplicity, and drawing for our answers from findings reported in the previous chapters.

Changes in the amount of street solicitation are quite difficult to determine with great accuracy. Even so, in our view, the evidence suggests that, the law has not resulted in a substantial long-term decline in street solicitation. This observation should be clarified. Although we conducted fairly systematic counts on the numbers of prostitutes on view in Calgary during the summer and fall of 1987, there was no previous baseline data with which to compare our findings. We discovered total counts of male and female prostitutes at peak periods to be in the vicinity of forty to forty-five persons throughout Calgary in the summer and fall of 1987. Similar numbers were observed in Regina in the fall. In mid-summer in Winnipeg we observed about twenty-five prostitutes on view. In Calgary the prostitutes themselves were equally divided as to whether their numbers had changed, and this was true independently of their street experience. From this we infer that no dramatic changes have occurred in Calgary, since such changes would probably be self-evident to the street people. In Winnipeg and Regina we conducted less systematic counts, relying on information from persons knowledgeable about the strolls. The consensus in these two cities was that the number of persons involved in street solicitation, to the extent that it had changed at all, probably had increased, if only slightly since 1985.

Several factors must be borne in mind in weighing the value of these observations. First, both Calgary and Winnipeg were studied during periods in which the constitutional standing of the law was in some doubt, as a result of which police use of s. 195.1 was suspended. Second, the summer months in which we conducted most of our field work were seasonal high points for street prostitution. We formed the impression that street prostitutes are more mobile during the summers

travelling from city to city, that more persons work as prostitutes during the summer, and that more time is spent on the strolls as a result of the warm weather and longer days.

Aside from changes in the actual numbers, we asked prostitutes whether they were aware of persons who had quit the business as a result of the new law. About thirty percent of the men and women were aware of such cases, and many others noted that there was a "cutting back" in the amount of time spent soliciting by those who remained. Both of these factors would reduce the number on view at any one point in time, though their influence would tend to be short-run under a regime of infrequent risk of arrest. In addition, we know that there is a substantial turnover in the population of hookers, especially at the lower age range, and that those who left may have been part of the pattern of natural career burn-out.

Aside from the contradictory career pressures inflating and deflating the supply of prostitutes, it was also the experience of all three cities which we studied that the introduction of the law and the crackdowns associated with it in the winter of 1986 had immediate effects. Police were able to charge, arrest and reduce the numbers of prostitutes on view. However, this was only for a brief period of time. In addition, the nature of police implementation of the changes, and the level of priority associated with street soliciting affected the intensity with which police continued to apply pressure on the prostitutes. First, the police, city hall, and the media gave high priority to the implementation of the Bill in the months prior to January 1986. Second, once the Bill was law the police in Calgary implemented the law through a small number of large scale sting operations. These obviously can and did reduce street numbers, but the effects were always short-lived, the numbers re-bounding to previous levels within days. In Regina and Winnipeg, the police conducted on-going patterns of arrest, but these were scheduled in concert with other vice work, particularly narcotics control, which was sometimes assigned higher priority. After all, prostitutes are always available and can be arrested whenever undercover operations can be mounted, while other vice matters may require immediate attention. Moreover, since "control" was the purpose of implementation, it could be handled selectively.

Has the law contributed to a geographic displacement of prostitution activities?

In Calgary, there is no evidence that the location of strolls has changed as a result of the new law or for any other reason. Nor is there evidence that prostitutes shifted their locus of operation from the streets to the bars or to escort services. The control of escort services is exceptional in Calgary. Also, the city has no massage parlours, brothels or other fronts for off-street prostitution which could have taken up any of the potential off-street migration. However, given the nature of enforcement practices--the specific evidentiary requirement concerning communication which has necessitated specialized personnel-intensive undercover

operations to establish the actus reus--as well as the constitutional challenges to the law, the pressure on the street trade has been episodic and infrequent. Given the fact that there have only been relatively few nights in 1986 and 1987 in which a prostitute was likely to be arrested in Calgary for soliciting, the assumption of the displacement thesis has not been met since there has not been consistent pressure applied on the streets, and, even when applied episodically, the ultimate risks at sentencing have never been very grave.

There was some evidence in many of the interviews with prostitutes that another kind of displacement may have occurred as a result of the law--the actual site of car dates. We were advised repeatedly in Calgary that the dates had become paranoid as a result of their risk of arrest, and that consequently the prostitutes were more likely to direct the dates to more discreet parking locations in residential and commercial areas further from the stroll. We suspect that pressure to drive to remote locations has probably declined given the modest levels of arrest of male customers over the 1986-87 period (i.e. 18% of all arrests and 20% of all persons arrested under s. 195.1).

Has the law contributed to a modification in the practices of prostitution?

We asked a number of questions of prostitutes to determine any inadvertent consequences of the law on the way in which the business was operating and in the characteristics of those involved. We were advised of the following points. The types of services offered and the rates advertised for them had not changed, though there was some indication of a change in the nature of the dates. The more up-market professional or businessman became scarcer as a result of the risk of arrest, and consequently the types of services requested were less expensive. In addition, the economic downturn in Calgary appears to have significantly affected the profitability of prostitution. Both the legal and economic factors have contributed to a decline in the returns to prostitution, although this was more evident among the female than the male respondents.

A second major area of change constituted an adaptation to the risks of arrest which made the prostitutes more passive in their behaviour on the stroll, more evasive in their conversations with dates, and more paranoid about undercover entrapment by the police. However, there was no evidence of greater reliance on cabbies or hotel clerks to arrange dates, though the prostitutes were beginning to attach more value to their repeat customers and telephone contact with them. Also, there did not appear to be any strong evidence that the women had become more dependent on the existing pimps after the law was passed, or that the number of pimps in Calgary had changed, or that the law had influenced opportunities for new pimps by making the women more dependent on them.

A third and related area involved changes in the perception of dangerousness on the part of the street prostitutes. Just under half reported that generally they felt unsafe, and about half felt that the streets had become more dangerous following the introduction of the law. This was for a variety of reasons including greater use of drugs, greater stress due to risk of arrest, greater pressure from pimps, as well as a change in the nature and attitude of the dates. These changes, however, may be due as much to socio-economic causes as to the legislation.

Although a number of respondents reported that the new law had influenced the kinds of male customers, questions directed at determining whether there were similar changes in the characteristics of the hookers, and particularly, whether there had been a systematic shift in the average age of hookers, failed to identify any systematic trend. Many respondents thought there may have been modest increases in the number of younger adolescents working, but that this was not something which had come about after 1986, and that it was unrelated to the legal change. Even so, we did detect a slight shift downwards in the average age of females arrested for prostitution by Calgary police over the past decade.

How has the Law been implemented by the Police?

We have been impressed by the variability in control practices from both longitudinal and cross-sectional perspectives. Generally speaking, the old vagrancy law made police control of prostitutes a rather simple matter compared to the situation created by Bill C-49. The construction of soliciting as a form of vagrancy allowed arrests to be made by uniformed officers of known hookers working in plain view in public areas. The new actus reus of communicating for the purpose of prostitution has made policing an altogether more sophisticated matter, usually entailing undercover male and female police officers typically associated with the vice units, frequently involving the use of body microphones, and distant audio-recording of conversations to ensure an objective record of the element of communicating. In small forces such as Regina's, officers must work not only undercover, but, due to the small number of officers and the likelihood of their recognition, under different disguises. Winnipeg has mounted undercover operations using cars with out-of-province licences on an occasional basis. Winnipeg also implemented the use of gross indecency charges to compliment the soliciting charges, though that option has become unavailable in January 1988 with the proclamation of Bill C-15. Calgary has resorted to infrequent episodic sweeps which have attempted to arrest everyone on view through the use of a team of undercover officers.

The differences in the implementation strategies reflect important differences in the land-use conflicts experienced in each city. Calgary appears to have confined the main stroll to an area with minimum interference with residential usage.

Consequently, there does not exist the constant political pressure from citizens on local governments to have the police intervene. Prostitution in both Winnipeg and Regina has had more serious community impact, and is viewed as a graver municipal issue in these cities. The model reflected by these observations is that chronic police control reflects on-going land-use conflicts between citizens and prostitutes; episodic control reflects low levels of such conflict. To a lesser extent, the issue of land-use conflict influences the aspect of soliciting that citizens find most objectionable. Where there is little conflict, the problem is diagnosed as nuisance; greater land-use conflict raises moral issues. This suggests there is a hierarchy of sensitivity in Canadian standards of tolerance--the further removed the problem is from the community, the greater the tolerance of the citizen, and the less serious the categorization of the issue. The closer to home the issue, the more we invoke what our children have to view, and what they make of the discarded condoms and the lifestyle they represent. In Calgary we find little public concern, and certainly no evidence in the daily press of a moralistic orientation to prostitution. Winnipeg represents the other end of the continuum, with decidedly moralistic concerns raised by the police and the appeal court and, to a lesser extent, the citizens in affected areas.

Another major factor differentiating the prairie cities is that Regina and Winnipeg have sizeable, downtown, Native communities, relatively impoverished reserves in the hinterland, and draw unemployed women from large surrounding areas.

What Factors determine Crown decisions to prosecute and what elements are essential to Crown prosecutions?

Charges laid by police are processed routinely by the Crowns in all three jurisdictions studied. There is no special process to routinely vet cases. In Winnipeg, where gross indecency charges were laid, police-Crown consultations were undertaken to clarify the specific evidentiary requirements that would be needed to show gross indecency (i.e. fellatio in a car parked in plain view in broad daylight). It is also clear that in all three jurisdictions conversations were held between the Crown office and the police to specify the communicating element required by C-49 after proclamation of the new law. Indeed, the only section of the law to be implemented has been the communicating-for-the-purposes-of-prostitution section. No charges have ever been laid for impeding or blocking pedestrian or vehicular traffic, and there is little evidence that this is a serious problem. This suggests that the public nuisance section of the Code identified by the Fraser Committee is not relevant to the actual levels of nuisance observed in the Prairie cities, particularly in Calgary, where our observations were most systematic. Furthermore, the obstruction section would raise questions of equity since the law is

written specifically to highlight the obstructions caused by pedestrian prostitutes as opposed to the nuisance of vehicular dates.

What sort of Defence cases have been argued in pleas of not-guilty?

Even though the majority of persons charged have ultimately pleaded guilty as charged, the progress of the common law is determined by contested cases. In the soliciting cases, defences have tended to fall into two broad areas--firstly, constitutional challenges that contest the legality of the law in terms of Charter rights and freedoms--freedom of expression, freedom of association, right to liberty, principles of fundamental justice or equality rights--and, secondly, challenges of the evidentiary requirements peculiar to s. 195.1. The constitutional issues will certainly go before the Supreme Court of Canada, and, regrettably, there is no way in which a rational individual could predict the outcome of that tribunal on the basis of the contradictory findings from various provincial courts of appeal. We say "regrettably" since the diametrically opposite findings in the Nova Scotia, Alberta and Manitoba Courts of Appeal augurs badly for an intuitively correct resolution. The likelihood that the evidentiary issues of the section will go to the Supreme Court in addition to the constitutional issues seems comparatively smaller. On the other hand, the Supreme Court has been known to sidestep key issues as in the Towne Cinema case,[1] where the direction of a new trial was accompanied by much obiter regarding community standards in respect of s. 159 of the Criminal Code. In that case, the court gave direction regarding its thinking, specifically on the issue of "social harm," while relegating the matter put before it back to the trial court.

What has been the record of prosecutions and outcomes?

As the following figures show, the number of arrests for soliciting appear to have no relationship either to the number of prostitutes in a city, or to its size. Over the period January 1986 to December 1988 there have been 149 arrests under s. 195.1 in Calgary, 655 in Regina and 290 in Winnipeg. Winnipeg and Calgary are about the same size (600,000), while Regina is smallest (177,000). In 1987, during the peak periods of business, there were about the same number of hookers on view in Regina as in Calgary; however, prostitutes were being arrested there about four times as frequently. Public pressure appears to be the major factor in this differential control pattern. Where strolls are located in city core communities or in downtown shopping areas, pressure for police action will be greatest.

In Calgary from January 1986 to December 1987, 149 charges were laid under s. 195.1. The 149 charges involved 134 different individuals comprised of 108 prostitutes (80.5%) and 26 adult male customers (19.5%). Of the prostitutes, 15 were hustlers (eleven adults, and four under the age of eighteen); ninety-three were

[1] Towne Cinema Theatres Ltd v. The Queen (1985) 18 C.C. C. 3d 193.

hookers (seventy-nine adults and fourteen persons under eighteen including four under the age of sixteen). Sixteen of the hookers were repeat offenders under s. 195.1. In Winnipeg for the same period 290 charges were laid. The Winnipeg figures did not record juveniles separately in 1986, and did not record multiple arrests of the same individuals. During the two year period, 88 adult male customers were arrested (30% of arrests), 15 male hustlers (5%), and 187 hookers (65%). In 1987, of the 49 arrests of female hookers, 9 were juveniles, and of the 5 male prostitutes arrested, 1 was juvenile (or about 20% in both cases). The Regina data were also not completely broken down. Of the 655 arrests, 132 involved males (20%), the majority of whom we presume were customers; the remaining 523 arrests involved hookers, though it was not known what proportion were juveniles. In all the figures of arrest from Regina, it is impossible to determine how many multiple arrests or separate individuals were involved. Clearly, the magnitude of the arrest record suggests that Regina prostitutes have been stung repeatedly over the two year period.

Table 12.1

Frequencies of Arrest for Prostitutes and Customers
In Calgary, Winnipeg and Regina, 1986-1987

	Calgary	Winnipeg	Regina	Totals
Hustlers	15	8	0	23
Trannies	0	7	0	7
Hookers	108	187	523	818
Male Customers	26	88	132	246
Totals	149	290	655	1094

One of the issues raised by the frequencies is the apparent non-equity in the liability to arrest of customers and sellers. The customers' apparent risk of arrest varies from 17% in Calgary to 30% in Regina. Prostitution in Canada stresses that each transaction of solicitation involves a crime by both parties--and that equal numbers of customers and prostitutes ought to be arrested.[1] This has not occurred. However, there are several reasons why it might be unrealistic to expect equity to result in the equivalent patterns of arrest. First of all, since the police have implemented only the communication section of the law, they have come to rely on the use of undercover decoys to monitor such communications. However, there is a shortage of female officers available to work as undercover agents, particularly in smaller police forces, limiting the ability to target male customers and female prostitutes with equal facility. There is also some evidence that the work is viewed as

[1] National Action Committee for the Status of Women, Ottawa, 1984.

unsavoury by the female police[1], and there are graver security issues raised by the exposure of undercover female officers to threats from legitimate hookers and pimps. This requires more personnel hours per arrest for a customer than for a prostitute. After all, the undercover female officer is exposed to view on the sidewalk; the undercover male typically drives around in the relative safety of an automobile. In 1987, a sting operation was called off in Calgary when the undercover female officers were surrounded by prostitutes and pimps who identified them as police and attempted to drive them off the stroll. No further stings were initiated against customers in 1987. Finally, at least in Calgary, there has been little public concern focussed against the customers per se; complaints to the police have typically been directed against the prostitutes. Aside from any considerations of sexism, these factors make the focus on female sellers more expedient. Ironically, control of male customers might be more consequential since our interviews with key personnel suggest that the latter appear to be more deterrable by threat of arrest and conviction than the prostitutes. To put the same point differently, police might have to apply more pressure on the prostitutes, in comparison with the customers, to have equivalent effects, since the latter are more persistent, are on view for longer hours, and, at any one point in time, outnumber the customers. Even so, the economics of prostitution suggest that there must be far more customers than prostitutes, however little time they spend on view.

The issue of equity is potentially explosive since the Charter requires that citizens be treated equally before the law. Differentials in liability to arrest might be explored in future defence arguments as a constitutional challenge to the law. In that case, the courts will be required to determine whether police implementation of the law, with the resulting imbalances in the rates of arrest by gender, constitute a breach of the equality provisions.

What are the impressions of the key legal actors regarding their perception of the value of the new law?

Interviews with law enforcement personnel, prosecutors, judges and defence counsel in Calgary suggested that, on the whole, prostitution was not viewed as a very serious social concern, and there were no strong feelings about C-49 one way or the other. In fact, the whole legal community has adopted a sort of resignation about the law until its constitutional status is clarified. The posture taken by the

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[1] "Dressed to kill, with makeup layered on thick, Mandy felt filthy and naked standing on the corner waiting to be approached by men wanting sexual favours...Dressed in black, Spandex pants, a low cut blouse and piles of bright makeup, Mandy said she felt like trash. "I was embarrassed, you feel like smut." Mandy was the pseudonym of an undercover female police officer involved in the 1987 sting operation against customers. Calgary Herald, August 25, 1987, p. B1.

Crown office has been to shut down policing when the law was under review in the Alberta Court of Appeal. After appeals were filed to the Supreme Court of Canada, prosecutions were put on hold again, though arrests were still possible. Calgary police expressed an interest in making soliciting a dual procedure offence to allow the fingerprinting of the accused and to better ensure that records of previous conviction are available for sentencing; they entertained no suggestion that they had an interest in prosecution by indictment. We have been advised that other police forces view the dual procedure option as an opportunity to return control to the former vagrancy situation. Defence counsel were concerned that heightened penalties and the more serious trial procedures might aggravate the nuisance problem by requiring the prostitutes to work more frequently to pay stiffer fines. They also viewed the dual procedure as contrary to the civil liberty ideals of the defence bar; why make speech, which is essentially commercial in nature, a question of criminal indictment?

II. Current Issues in Bill C-49: Dissensus in Legal and Social Opinions

The Supreme Court has yet to hear appeals regarding the constitutionality of s. 195.1. In provincial courts of appeal there is no consensus about the constitutionality of the law. Consequently, any recommendations arising from the individual site studies must be read with reference to the outcome of such appeals, as will any future government policies developed under current political pressures to control prostitution in Toronto and Vancouver.

If the legal opinion over the harmfulness of prostitution is still out, the public concern is no better defined. It is still sensible to ask what society wants from our laws regarding prostitution. There does not exist a general consensus in prairie society about what the problem consists of. Nuisance, crime, morality, public health and the protection of childhood are among the key concerns raised in discussions of control. Each diagnosis of the issue assigns importance to social control relative to the particular element which is given priority. Nuisance and child abuse obviously represent opposite ends of the continuum. Nuisance can be dealt with casually; child abuse requires immediate attention. The public discussion of prostitution has not produced a consensus over the appropriate social attitude to the street trade.

Certainly, there is a code of public life in Canada which has resulted in the resignation of politicians and judges believed to have had connections with prostitutes, even where the nature of such connections has not been clearly established. However, the resignation remedy suggests that the conduct at issue was simply indiscreet--not unnatural, or abhorrent. Such conduct by a private citizen would be viewed as tolerable. Indeed, the image of the hooker in popular fiction--in films like "Klute" or "McCabe and Mrs. Miller"--paints a positive picture of prostitution. Prostitutes also figure significantly in the private lives of public figures

such as Hemingway and Mackenzie King. And every military concentration of young men from Saigon, to Manilla to the Honduran border interpret the rise of commercial sexual access as a natural fact of life. So the attempt by parliament to criminalize not only the activities of sellers but also of buyers flies in the face of generally neutral or tolerant public attitudes. Contrary to the sometimes frantic depictions of urban blight painted in submissions to the Fraser Committee, most Canadians view prostitution as a relatively minor social issue. If parliament is trying to take the lead in redefining the public view of prostitution and the need to suppress it, this might be politically and legally unsound. In the current controversy, the main source of pressure on parliament has come from vocal minorities in affected urban areas. In addition, we have heard from the social welfare sector which exercises issues of incest in the backgrounds of hookers, and the vulnerability of juveniles to sexual exploitation on the street. When we contemplate the fictional images of prostitutes which view them in positive roles with the social welfare characterizations which stress the hooker as victim, one may well ask which imagery will steer public policy? All this goes to the question of what is the point of the law. What is a law of prostitution supposed to encourage or discourage? The Manitoba Court of Appeal views the law as the least intrusive way of eradicating a vice--prostitution per se. However, prostitution per se is not illegal, and many believe that parliament has only tried to curb the inadvertent and negative side aspects of this form of work.

So what is the lesson we draw from all this? In its three year review of the legislation, parliament will consider a range of control options. First of all, as a purely practical matter, parliamentarians must wait for a Supreme Court decision before further policy changes can be contemplated. It will make a great deal of difference if the law is struck down--as in the case of the abortion law. In that case, planning will necessarily go back to square one. However, if the American jurisdiction is any guide, one might predict that soliciting will not be found to be protected expression (speech) since the U.S. Supreme Court has not found state anti-soliciting laws unconstitutional. We are reluctant to speculate that the limitation imposed by s. 195.1 in the Canadian Criminal Code will be found reasonable. The actus reus of the crime created by parliament is simply public conversation, i.e. advertising by word of mouth. In order to deprive someone of wealth and/or personal liberty, the Crown is not required to prove that such communication be obtrusive, noisome or harmful. If the latter was a situation actually discovered by the police, it is unclear why the cause disturbance law would not provide a more appropriate legal remedy. However, if the Canadian court follows the American example and finds the limitation of speech justified, parliamentarians will be confronted with several control options--including graver penalties, graduated penalties for first, second and third convictions, making the offence hybrid or dual procedure, etc. In trying to tailor a re-draft of the law to its requirements by society, parliament will have to weigh which of the elements of prostitution is given

precedence--nuisance, vice, child welfare, health--each of which has different implications for control, and different jurisdictional domains.

If nuisance is the issue, an ability to clear the streets of people whose behaviour is bothersome must be instituted in a way that creates the least liability and risk to those involved. The model here is one of crowd control--something the police do that shapes public behaviour sometimes with and sometimes without arrest. By contrast, if vice is what exercises us, then good reasons must be led to establish that it is within the power of secular authorities to suppress immoral conduct, and that the current law is required in spite of the movement away from such controls over the last twenty-five years. Though child welfare considerations fall outside the scope of the federal Criminal Code, changes wrought by Bill C-15 specifically provide penalties for those procuring adolescents for prostitution and for sexual acts involving young persons. However, if we are concerned with prostitution because it involves persons not mature enough to be allowed to engage in it, then the federal parliament may also want to create enabling legislation which would operate under provincial social welfare laws that empower the provinces to limit the age at which a person might be considered at moral, health and physical risks by virtue of the sort of work they do. In such a case, the "design features" of the law would allow provinces to set minimum age requirements for those involved in commercial sexual activities. This type of law would regulate labour relations as opposed to crowd control or vice. The health law would similarly fall within provincial regulations and would put a limit on the ability to work, based on the likelihood of spreading contagious diseases. Obviously, these represent tremendously varied alternatives.

III. Assessment: Matching Sociological and Legal Factors

What are the problems of prostitution sociologically?

First, the prostitution subculture involves a complex of delinquencies and victimizations over and above the actual transaction of prostitution--theft from customers by prostitutes, violence by customers, pimps and other prostitutes against prostitutes, the murder of prostitutes by tricks and pimps, the risk of sexually transmitted diseases, narcotics and alcohol abuse, narcotics trafficking, tax evasion, reduced prospects for legitimate careers, and enhanced prospects for marginal work in other commercial sex industries such as exotic dancing, massage, bawdy houses, escort, and pornography. This complex of career contingencies in the subculture of prostitutes exists in addition to the acts of commercial sex, and some of these are far graver than the moral issue of prostitution per se. Also, it is frequently apparent that prostitution is only one of the concerns of those involved in the business; they frequently are involved in theft, B and E's, trafficking and other crimes. From this reading, the fact that it constitutes an outlaw subculture may be of more relevance than the actual fact of commercial sex.

Second, the career origins of prostitutes suggest evidence of some sexual and/or physical victimization, some economic marginalization in the background of those recruited, a perceived lack of alternatives for those already in it, etc. However, it is not clear from our data how important childhood victimization is as a determinant of entry into the career. It may promote an exit from the home during the teen years, and it may subsequently be learned as a strategy of coping as a runaway. Prostitution appears more to be a crime of opportunity. Persons who are sexually abused may leave home early--and may subsequently try to hook, but the relationship may be simply contingent. Hooking, like boosting and drug-dealing, can provide a measure of financial support, sometimes by itself, at other times in association with social assistance. Also, hooking may provide a superior source of income for young, attractive high school drop-outs, or even graduates, with few moral scruples in comparison with the secretarial and service sector alternatives. Two other factors are important in such decisions. Having a drug habit and/or children to care for are strong push factors, and drugs, booze, promiscuity and the outrageous lifestyle (the street status of "walking on the wild side") are important pull factors. However, in spite of these, for the majority of those who try to make a career out of it, prostitution does not remain a viable form of work in the longer run, for biological as well as social reasons--aging and stress.

There is another sociological factor--the stigma attached to the participants by society and the psychological damage which is entailed. There is a distinctive ambivalence experienced by the participants to one another. The dates know that the hookers are real people, that they are individuals; but since the law has tried to suppress the activity of soliciting, some of them take a very dim view of the very prostitutes whose services they seek. Conversely, many of the hookers tended to speak of their dates in unsavoury language. This suggests that the stigma associated with the activity is managed by many parties by mutual invalidation. Obviously, this is emotionally unhealthy. This should not be overstated since many prostitutes also speak very positively of their dates, particularly their regulars.[1]

Related to the stigma is the problem of secrecy. The work of prostitution and the purchase of the services of prostitutes are typically sought and conducted surreptitiously by those involved. The hookers we interviewed were mortified that parents might discover or had discovered their line of work. Many had left their home cities to minimize family opposition. As for the dates, encounters with hookers are normally suppressed in normal conversations. Though neighbours and colleagues of the authors were known to have intimate contacts with hookers, they were not forthcoming with self-disclosures. There appears to be a cultural taboo on

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[1] There are many candid discussions of the experience of prostitutes in Laura Bell (ed.), Good Girls, Bad Girls: Sex Trade Workers and Feminists Face to Face, Toronto: Women's Press, 1987.

sex for money, or perhaps, to put it more accurately, there is a taboo regarding the public *recognition* and normalization of such relationships. As noted earlier, the economics of prostitution require that, in contrast to the retailers, there must be many more consumers of the service than sellers. Yet the opprobrium against this form of sexuality appears to fall disproportionately on the shoulders of the retailers, as opposed to their customers. The "shame the johns" campaigns are instructive for two reasons.[1] First, they highlight the fact that consumers typically escape opprobrium. Second, as a purely practical matter, they have never actually been successful in transferring the stigma to the customers, and in reducing male interest in the business. To what should the failure be ascribed--to cultural beliefs about the inevitability of male sexual "latitude," or to the simple inefficiency of the campaigns themselves? We are in no position to dismiss or recommend either proposition. Both seem to have merit.

Can social policies be devised which are sensitive to the sociological issues outlined here and which can improve the circumstances associated with prostitution?

In the context of this research we were frequently advised that "prostitution is the oldest profession--it cannot be eliminated." If taken seriously such advice would be nihilistic since no change appears possible in the face of the inevitability of prostitution. We do not share this view. Nor do we share a professional counterpart to this observation which is sometimes found in sociological circles. Frequently, in debates over prostitution, sociologists have been reluctant to propose remedies which fail to deal with the "root causes" of deviant behaviour. This often involves delving into biographical, and various sorts of structural factors which are often beyond the control of governments. In the conventional sociological wisdom of the '60's and '70s, nothing succeeds which fails to deal with root causes. While such factors may explain the naturalistic origins of various kinds of deviance, it does not follow that control practices which create deterrent and incapacitating effects are inconsequential in containing aggregate trends, even in the older professions. So we are not faced with an either-deal-with-the-root-causes-or-rely-on-control-practices dilemma, but with a "both-and" situation--recognize both that there may be factors which push individuals into an outlaw subculture, and that there are steps which can be taken to curb its negative consequences. If we agree with the "both-and" approach, then social policy with respect to prostitution will entail complex solutions including educational, social welfare, health and welfare, manpower training, municipal regulation, and criminal law approaches. And while the Department of Justice might formally have a mandate only with respect to the last area--criminal law, the formal policy document of the Department, The Criminal Law in Canadian

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[1] The campaigns, initiated in Vancouver, are directed against cruising customers. The object appears to make private commercial sexual experiences a matter of public observation, and their power appears to consist of throwing the disrepute of the activity onto the customers.

Society suggests otherwise. In fact, there are grounds for believing that this basic policy document within the Department (a) makes control of soliciting under the Criminal Code precarious, if not unwise and ill-advised, and (b) itself recognizes the need for solutions which fall beyond its own mandate. We shall deal with each of these points in turn.

CLICS suggests that "the major criterion for determining what conduct merits response from the criminal law is whether the conduct causes or threatens serious harm to individuals or society" (p.3). It takes an elastic conception of serious harm to find that soliciting, which is a form of nuisance consisting of being on view in public and available for casual sex, belongs in a code with such a rational criterion. What is the serious harm of soliciting? If prostitution itself is legal, the soliciting law appears to be a federal attempt to regulate advertising. One might argue that unless the issues of control concern combines to restrict trade or fix prices, or false advertising, the matter ought to belong under provincial commercial law.

On another construction, the matter is a question of public disturbance, and/or disorderly behaviour. Under this view, the Government of Canada chose to ignore the recommendations of the Fraser Committee which would have widened the parameters of s. 171, which deals with causing a disturbance, while curtailing the crime of soliciting. The Committee also thought that legal provisions should be made to allow prostitutes to operate out of their own homes or apartments. From the government's perspective, ignoring the disturbance recommendations was probably a sound move since the nuisance elements in s. 195.1 have never been viewed as consequential for police control. In point of fact, the conduct of most hookers most of the time is not noisome, provocative, or disturbing; hookers do not try to hook members of the public who are not looking for their company. Arguably, there is nothing in the actual conduct of street prostitutes that merits criminalization. In fact, the harm does not consist in any one person's behaviour, but appears to consist in the collective utilization of public property by prostitutes where this interferes with the ability of other persons to enjoy both their own property and the public property in their neighbourhoods. Even granting this, it would appear questionable to presume a priori that only the property owners have a legitimate claim to public space, as the soliciting law appears to suggest. If prostitution per se is legal, the use of the commons would appear defensible, and the nuisance associated with it should be treated in the same way in which we deal with the "externalities of production" (water, air and noise pollution) that arise from other industries. This is not to suggest that a carte blanche should be given to prostitutes, but that the competing claims of hookers, consumers and citizens have to be recognized and put into perspective. In point of fact, the prostitution trade only uses the street as a medium for contacting dates; for neighbours, the tranquility of the streets, especially in residential areas, is a good in and of itself, though it is not clear that federal laws either do, can or should guarantee such tranquility. Usually, that is the preserve of the municipalities. The

monarch's peace does not mean that streets must be free of street hawkers or door to door salesmen. However, this line of thinking does suggests that alternatives to the strolls might be considered in which we mediate both the ability of citizens to enjoy their neighbourhoods, and the ability of prostitutes and their customers to meet. We shall deal with our proposal below. We turn now to the second issue raised by CLICS--the reliance on feasible alternatives to the criminal law.

In outlining how the criminal law ought to operate, CLICS describes a series of application principles, the first of which suggests--"the criminal law should be employed to deal only with that conduct for which other means of social control are inadequate or inappropriate, and in a manner which interferes with individual rights and freedoms only to the extent necessary for the attainment of its purpose" (p.4). In the context of prostitution, a liberal reading of this principle would imply that the reliance on a federal criminal law to regulate the manner of advertising for commercial sex may not be the only means of social control that is adequate or appropriate to the harm at stake, and that less intrusive means, such as municipal regulations of land-use, may be preferable. Also relevant in this consideration is funding directed towards the creation of training alternatives to sexual work, counselling on strategies to muster control of deviant occupations and lifestyles and, relatedly, drug abuse counselling, education regarding the risks of STDs, and reliance on Bill C-15 to control adults seeking sexual encounters with juvenile prostitutes. We are not certain of how extensive these alternatives are, and of the exact departments and levels of governments which might administer them. That can be articulated in future studies. It is enough for us that CLICS recognizes that for reasons of financial responsibility and legal parsimony, the scope of the criminal law must be limited. The Criminal Code is the bluntest instrument of the state and must be limited in its application only where sound, alternative policies are absent. What proposals would we advance on the basis of these wider considerations?

IV. Modest Proposals

In our view some progress might be made in the control of street prostitution by creating a regime which recognizes the market for commercial sex, but which attacks the harmful, subcultural contingencies of street prostitution. In short, our proposal advises the deceleration of the street subculture of prostitution through efficient anti-soliciting legislation and its replacement by municipally controlled off-street prostitution in the form of escort agencies. In effect, we recommend that consideration be given to trends already underway in Canadian cities--the flourishing of off-street prostitution duly advertised in the morning papers and yellow pages in all the cities we studied. This proposal respects the views of citizens that they must have control of the peace and orderliness of neighbourhood streets, while also acknowledging the interests of hookers that they must have opportunities to conduct work which, under Canadian law, is in principle permissible. In our view, the

regulation of morality is largely inconsistent with the objectives of law outlined in CLICS. If prostitution is unhealthy as a form of work, it is not parliament's job to prohibit this any more than it is parliament's job to prevent asbestos workers or miners from choosing risky work in these other areas. Persons must be allowed the least amount of interference in working as they choose, especially where parliament has introduced changes which make the nature of the work itself legal. This applies whether parliament expressly decided to legitimate the work, or whether, as a result of changes made on other considerations, parliament de-criminalized the status of the "common prostitute;" for surely, given the latter construction, the practitioners of the trade are entitled to the interpretation of parliament's action which is least injurious to their own decisions.

We make several proposals. First, we recognize competing interests in access to the streets for business purposes and for neighbourhood enjoyment. Since street prostitutes may contact clients in alternative ways, we would recommend that the anti-soliciting law be revised to make it more efficient in the sense that prostitutes can be excluded from locations in which their presence is deleterious to residential land enjoyment; alternatively, such legislation might enable the police to allocate them to sites in which such land-use conflict is minimal, and in which their interest in access to customers is recognized. The exercise of such options ought to be made available to municipal governments operating under provincial law. It is not that prostitutes are nuisances, for generally speaking they are not. What is disturbing is simply that they are prostitutes, and that the land use interest which they represent conflicts with residential land use and the values of domesticity which are associated with it. Thus, we are recommending two things here--strengthening s. 195.1 in a way that would allow police more efficiency in "crowd control," and enabling legislation which would allow municipalities control in designating areas that would be open for street soliciting. We will come back to this second point momentarily to examine reasons why such a course of action might have unintended negative consequences. As for the first point, how can s. 195.1 be strengthened? In this discussion, we have to keep sight of the fact that these proposals are not meant to eradicate the oldest profession, but to "pacify" it, or bring it under control, and make its participants more responsible to the law. Our objective in stengthening s. 195.1 would be to allow police greater control in the siting of prostitute-client contacts, not in suppressing these and driving them underground.

We propose (a) maintaining s. 195.1 for the purpose of allowing police to control the siting of strolls where their presence least affronts the public; (b) creating provincial legislation to allow designated areas where s. 195.1 would not apply; (c) making the current communication for the purposes of arranging commercial sexual encounters a three month probationary offence mandatory on a first conviction, the purpose of this being to make the accused accountable for their own good behaviour so that further acts of street soliciting would constitute a breach of probation; (d) and

provide further that the penalties for subsequent offences be prescribed by law with progressive fines to maximize compliance. In our view the effect of such changes should be to create pressure on prostitutes to move off the unregulated strolls. Our fifth proposal, (e) advises that federal code sections dealing with the control of the movements of prostitutes and/or the bawdy house provisions be revised to allow creation of municipal by-laws that would licence certain forms of off-street prostitution. The City of Calgary by-law provides a model of how such businesses can be licenced in the case of escort services, though we think the embargo which prevents known prostitutes from obtaining licences is unhelpful, especially during a period in which we might try to bring about a change in the way the business operates, switching attention from street to off-street locations.

Since the Supreme Court has yet to comment on the constitutionality of the current law, it is worthwhile thinking about how our proposals might work in the event that the law is struck down. Clearly, the proposals advanced here require some leverage to deal with unregulated soliciting. In the event that s. 195.1 (c) is found unconstitutional, it may still be possible for parliament to re-draft a new law designed to pursue nuisance arising from soliciting, particularly where alternative legitimate avenues are created for communicating and working.

What is it that we hope to achieve by these changes?

We foresee progress in the replacement of the street life with its subculture of drugs, deceit, theft and violence by a more disciplined business setting with a profit motive in which all the participants are accountable to one another as in any other lawful business. Screening of escorts in the licensing phase would put prostitutes with drug habits out of business as far as off-street opportunities are concerned, making them more likely to be put out of circulation by arrest for staying on the street in unregulated areas. Both factors would pressure those with habits to regulate them--or find their ability to work suppressed. Escort provisions could require and enforce requirements for regular medical check-ups and screening for AIDS, something not currently done in Calgary (because, we were advised, of the possibility of liability to the city to damages if a customer contracted a disease from a licenced escort). Dates would be identified prior to contact, their addresses would be specified (as is currently the case in Calgary) reducing the physical risk to the escorts since anonymity would not be assured--quite the opposite. Mutual accountability of dates and escorts to the agencies should curtail the likelihood of exploitation through theft or violence since everyone involved would be aware of the probability of apprehension. Pimps would find themselves replaced in some measure by the agencies and their owners, a situation that might limit the amount of money an individual pimp could exploit from the escorts, since fees are paid only for "introductions". Consistent with current practices under the Calgary by-law system, all the participants would become accountable for any monies earned, since the

licence system has resulted in introductions between agencies, escorts and Revenue Canada. Persons not used to paying taxes would have incentives to do so, to the extent that the businesses generate opportunities and wealth. Also, the licensing system would limit the ability of persons to work on the basis of age; consequently, the access of juveniles to the escort market would be curtailed. Finally, the licensing system, with appropriate residency requirements, ought to stabilize the circulation of prostitutes moving between cities, a situation which currently makes the monitoring of the streets for new faces, and for persons with outstanding warrants, more difficult.

The proposals deal with nearly all of the sociological factors that make prostitution problematic except for one--the moral issue. This proposal asks parliament to accept as a fact of life that prostitution, in one form or another, is market driven by supply and demand, and that the purpose of the law is not to suppress such a market, but to regulate it and curtail its most offensive contingencies. In our view, we ought to deal with nuisance by arrest and leave morality to education and socialization.

What about massage parlours, brothels, prostitute apartments and regulated strolls?

These proposals have stressed the development of escort services over the current systems of unregulated street strolls. The chief complaint regarding the wide-open street strolls is that land-use conflicts have been serious sources of complaints in major Canadian cities. In our view, one of the chief merits of escort is that land-use conflicts are virtually a non-issue. The trick sites are not common bawdy houses, but the same sort of locations that couples normally resort to for romantic encounters--hotels, motels and homes. In the states of Victoria and New South Wales, Australia, state laws were modified in the early 1980s to allow the licensing of brothels by local municipal governments, and the bawdy house regulations were removed from the criminal laws of each state.[1] The experience in Australia was that municipal governments refused by and large to issue land-use permits for brothels since the creation of specific sites for prostitution were thought to be unacceptable to the population. Like lightening rods, specific brothel addresses draw fire in the form of moral opprobrium. The lesson we draw from this is that any area which is publicly defined as a site of prostitution has the potential to raise land-use tensions and citizen objections. This would clearly be an acute situation in the case of massage parlours and brothels, though less so in the case of individual hookers operating out of their private residences. In the latter case, we would still have no particular control of violence, drugs, income tax, health standards, age or pimps; prostitution would remain part of the underground, outlaw economy.

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[1] Marcia Neave, Inquiry Into Prostitution, Final Report, Two Volumes, October 1985, Melbourne: Government of the State of Victoria.

The potential of creating regulated strolls in which escorts would be issued licences to work the streets in front of certain addresses is equally precarious. Though we would not discount the possibility of a publicly regulated stroll monitored by the police, it would only tend to make the sellers accountable, not the dates; would provide no benefits in terms of identifying who the dates were in cases of physical abuse; would not (necessarily) eliminate the intrusion into residential areas for car dates; would not necessarily eliminate land-use conflicts since public areas could become red light districts, with all the subcultural elements associated with such areas; and would be difficult to police in terms of checking who was, and who was not, working under a licence. Clearly, in weighing the alternatives, escort service is to be preferred over the alternatives though the latter might be viable under strict surveillance.

What problems exist in trying to implement such a change in the industry?

What we expect to achieve is a gradual migration away from the streets into the escort locations. However, being realistic, there will be both relief and resistance from prostitutes over these proposals. Many will be relieved to have their work legitimated, and to have the freedom to work without the stigma of arrest. However, others will resent the loss of control, the prospect of taxation, reliance on intermediaries, the diminished inability to screen customers, and the sidewalk commaraderie. The current ability to refuse dates from unsavoury or threatening individuals on the one hand, and the ability to put one's best personal assets on view competitively on the other, are aspects of the street which are lost by the escort business. Formally regulated strolls might get around this--particularly if shifted to private properties. The issue is whether the benefits of safety, health, respectability, ability to work and mutual accountability of everyone involved will off-set these costs. We believe they will.